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OVERSEAS DEPENDENT TERRITORIES AND CROWN DEPENDENCIES OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[14 September 1995]

CONTENTS

		Page
Introduction		2
	Annexes	
I.	Anguilla	3
II.	Bermuda	12
III.	British Virgin Islands	24
IV.	Cayman Islands	31
V.	Falkland Islands	38
VI.	Gibraltar	52
VII.	Hong Kong	64
VIII.	Montserrat	78
IX.	Pitcairn	85
X.	St. Helena	89
XI.	Turks and Caicos Islands	96
XII.	Isle of Man	104
XIII.	Bailiwick of Jersey	110
XIV.	Bailiwick of Guernsey	125

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Introduction

1. In accordance with the consolidated guidelines for the initial part of the reports of States Parties (HRI/1991/1) which was transmitted under cover of the Secretary-General's Note dated 26 April 1991 (HRI/CORE/1), the Government of the United Kingdom submits, annexed herewith, the core document (the "country profile") in respect of:

(i) Each of its Dependent Territories overseas to which one or more of the various United Nations human rights treaties applies, that is to say, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, the Falkland Islands, Gibraltar, Hong Kong, Montserrat, Pitcairn, St. Helena and the Turks and Caicos Islands (annexes I-XI).

(ii) Each of its Crown Dependencies to which one or more of those treaties applies, that is to say, the Isle of Man, Guernsey and Jersey (annexes XII-XIV).

2. Appendices referred to in the annexes are available for consultation in the secretariat.

Annex I

ANGUILLA

I. LAND AND PEOPLE

1. The resident population of Anguilla grew by 13.4 per cent from 6,680 in 1984 to 8,960 in 1992, both census years. The 1992 figure comprised 4,473 males and 4,487 females. Sixty-eight per cent of the population were persons aged 35 years or under. The population density was recorded at 106 per square kilometre (276 per square mile). Just under 15 per cent of the population counted comprised nationals of other Caribbean countries and under 10 per cent comprised expatriates from the United Kingdom, the United States and elsewhere. Other statistical information shows the following:

Per capita income		EC$ 16.400 (1992)
Gross domestic product		EC$m 152.57 (1992)
Rate of inflation		2 per cent (1992)
External debt (EC$m)		23.6 (1992)
Rate of unemployment		7 per cent (1992)
Adult literacy rate		92 per cent (1992)
Percentage of population speaking English as mother tongue		Not available, but assumed to be 100 per cent. This does not include a number of Spanish and French nationals who reside on the island.
Life expectancy	Males	68 years (1992)
	Females	69 years (1992)
Infant mortality rate (per 1,000)		28.4 (1992)
Maternal mortality rate		Not available
Fertility Rate		1.79 (1992)
Percentage of population		
Under 15		30.5 per cent (1992)
65 and over		9.0 per cent (1992)
De jure population		
Resident		8,960 (1992)
Off-Island (for less than 3 months)		330 (1992)
	Total	9,290

Percentage of population in rural and urban areas	There is an absence of a clearly identifiable urban area in Anguilla although certain places are more densely settled than others.
Percentage of households headed by women	Not available. Assumed to be less than 15 per cent.
Religions	The principal denominations are Anglican, Methodist, Seventh-Day Adventist, Baptist, Catholic and Church of God of Prophecy.

II. GENERAL POLITICAL STRUCTURE

A. System of government

2. Prior to Associated Statehood, Anguilla was governed as part of the colony of St. Kitts-Nevis-Anguilla. There were petitions against this union in 1825, 1872 and 1958. The protests reached a climax when the three islands became an Associated State in February 1967, with responsibility for internal affairs vested in the Central Government in St. Kitts.

3. In May that year Anguilla rebelled and took over its own affairs. British police occupied the island in 1969 and a senior British official was appointed to help administer it. In 1971, the United Kingdom Parliament passed the Anguilla (Administration) Act under which a Commissioner was appointed to be responsible for the direct administration of the island, working in close consultation and cooperation with an elected Council.

4. In 1976 a new Constitution established a ministerial system of government in Anguilla and provided for the administration of the island which, however, still retained its legal ties with St. Kitts-Nevis.

5. In December 1980, with the passage of the Anguilla Bill by the United Kingdom Parliament, the island was formally separated from the rest of the Associated State and resumed the status of a dependent territory.

6. The Constitution of Anguilla is now contained in the Schedule to the Anguilla Constitution Order 1982, as amended by the Anguilla Constitution (Amendment) Order 1990. (Copies of these two instruments are attached as appendices 1 and 2.) It provides for a "Westminster style" form of parliamentary government, with a Governor (representing the Crown), an Executive Council (corresponding to the Cabinet) and a largely elected legislature, the House of Assembly, from which the Executive Council is drawn and to which it is in principle responsible.

7. The Governor is appointed by the Queen on the advice of the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom to whom he is responsible for the exercise of those of his functions which the law does not require him to exercise on the advice of some other authority. He presides over the Executive Council, which he is, in general, required to consult and on whose advice he is then required to act. But he retains direct responsibility for (and is not required to consult the Executive Council on) certain matters, notably defence, external affairs, offshore finance, internal security (including the police) and the public service. He also has reserved legislative powers, under the authority of the Secretary of State, to procure the passage through the Legislative Council of laws which he considers are required in the interests of public order or public faith. He is empowered to delegate some of his responsibilities to the Deputy Governor.

8. The Executive Council comprises the Governor, the Chief Minister and three other Ministers, and also the Deputy Governor and the Attorney General as ex officio members.

9. The House of Assembly consists of 12 members: the Speaker; the Deputy Governor and the Attorney General as the two ex officio members; seven elected members; and two nominated members.

The powers of the House of Assembly

10. Subject to the provisions of the Constitution and to the Governor's approval, the Assembly regulates its own proceedings. It may make laws on any subject, which it does in the form of bills which, having been passed by the Assembly, are presented to the Governor for his assent. When assented to they become ordinances. Though the Governor has the power to refer a bill back to the Assembly for it to consider any amendment which he may recommend, in general he exercises his power of assent in accordance with the advice of the Executive Council, and in practice most bills are government bills, drafted in the Attorney General's Chambers and approved by the Executive Council before being introduced in the Assembly. Formally, all ordinances are subject to disallowance by the Queen on the advice of the Secretary of State. The United Kingdom Government retains the right to legislate for Anguilla by Act of Parliament or by Order in Council.

Parliamentary sessions

11. The maximum life of the House of Assembly is fixed at five years. But the Governor may dissolve it earlier, after consultation with the Chief Minister, thus paving the way for a general election before the expiry of its maximum period. A general election must be held within two months of a dissolution. There must be at least one session of the Assembly in every year. Prorogation, which is the way in which a session is terminated when the Assembly is not being dissolved, is effected by the Governor acting in accordance with the Chief Minister's advice.

Parliamentary elections

12. Anguilla is divided into seven electoral districts for the purposes of a general election.

13. The legal framework for the conduct of elections is provided for in the Constitution and in supporting legislation, principally the Constitution and Elections Ordinance (Cap. 162) and the Anguilla Council Elections Ordinance 1972.

14. Under the Constitution a person is qualified for election as a member of the Assembly if, being a person who "belongs to Anguilla" (a term which is defined in the Constitution), he is registered as a voter in Anguilla and either was born in Anguilla and is domiciled on the island at the date of his nomination for election or has resided in Anguilla for three years immediately before the date of his nomination for election and is domiciled on the island at that date and is the son or daughter of parents one of whom was born in Anguilla.

15. Certain persons, though otherwise qualified in accordance with paragraph 14 above, are expressly disqualified by the Constitution from membership of the Assembly. These include persons who are ministers of religion (defined in the Constitution), or who have been declared bankrupt, or who are certified to be insane or otherwise of unsound mind, or who are under death sentence or who have been sentenced to more than 12 months' imprisonment for some offence, or who have committed certain offences connected with elections.

16. The Constitution also sets out the qualifications for voters. A person who is at least 18 years old and is resident in the electoral district in which he seeks to be registered as a voter is qualified to be so registered if either he is a British Dependent Territories citizen who was born in and is currently domiciled in Anguilla or he is a person who "belongs to Anguilla" and who has certain specified residence and/or family connections with Anguilla. There are certain disqualifications for registration as a voter which are broadly similar to those relating to membership of the House of Assembly (see para. 15 above).

17. There is a voter enumeration every four years. In between, the register of voters is updated annually.

The party system

18. When Anguilla sought self-determination in 1967 the idea then prevalent was that it would be unwise to form political parties as this would bring about divisions among the people at a time when they needed to be united. However, over the years a number of parties came into existence. Accordingly, whenever there is a general election (or a by-election) the parties present their candidates and outline their plans for the island. In some cases there may be independent candidates. The candidate in each electoral district who wins the most votes on polling day is elected and is later sworn in as a member of the House of Assembly.

19. The last general election, in March 1994, produced an inconclusive result, with the Anguilla National Alliance (ANA), the Anguilla United Party (AUP) and the Anguilla Democratic Party (ADP) all winning two seats each. The seventh seat was won by an independent candidate. The AUP and the ADP then formed a coalition which became the new Government on 18 March.

Government and opposition

20. The Governor appoints as Chief Minister (i.e. the head of the Government) the elected member of the House of Assembly whom he judges to be likely to command the support of a majority of the elected members of the Assembly. As a rule, this is the leader of the party which won the most seats in the most recent general election, and his party therefore forms the Government. But there may be cases, as noted above, where the Chief Minister is the leader of a party which forms a coalition with others to form the Government. The leader of the party which holds the next largest number of seats in the Assembly outside the Government is appointed as the official Leader of the Opposition. He and those elected in his party join other opposition members on the opposite side to the Government in the House of Assembly.

21. Equal time is allowed to both sides of the Assembly to state and defend their views on any matter of public interest, thus ensuring the democratic process. The proceedings of the Assembly are open to public attendance, and are also broadcast live on the Government's radio station, to give the public an opportunity to listen to the debates.

B. The law

The courts

22. The courts structure in Anguilla consists of a Magistrate's Court, a High Court, a Court of Appeal and the Judicial Committee of the Privy Council. The High Court and the Court of Appeal are in fact the courts which together constitute the Eastern Caribbean Supreme Court. This Court and its judges serve not only Anguilla but also a number of independent countries in the Eastern Caribbean and a number of other British dependent territories in the region. (At present they visit Anguilla periodically for their sittings but the Eastern Caribbean Supreme Court is considering the appointment of a judge to be shared on a permanent basis by Anguilla and Montserrat.) There are elaborate provisions, which form part of the law of all the countries and territories concerned, regulating the appointment and tenure of office of the judges and ensuring that they are protected from political interference from any source. So far as concerns the Magistrate and the holders of other subordinate judicial or quasi-judicial offices in Anguilla (e.g. the local Registrar of the High Court), the Constitution of Anguilla requires the Governor, in exercising his powers of appointment, etc., to consult with the Judicial Services Commission, which is itself established by the Constitution and which consists of the Chief Justice of the Eastern Caribbean Supreme Court, another judge of that Court and the Chairman of the Public Service Commission.

Criminal proceedings

23. The responsibility for initiating criminal proceedings in Anguilla is generally exercised by the police who will, however, refer matters which might involve some difficulty to the Attorney General's Chambers for guidance or for the Attorney General to take over. In some cases the Attorney General may himself initiate proceedings. Section 34 (1) of the Anguilla Constitution empowers him to institute and undertake criminal proceedings against any

person for an offence against the law of Anguilla; to take over and continue criminal proceedings instituted by any other person or authority; and to discontinue such proceedings at any stage before judgement is delivered.

24. There are three categories of criminal offences in Anguilla: those triable only on indictment (that is, before a judge and jury); those triable summarily only; and those triable either way (that is, either on indictment or summarily).

25. Very serious offences, such as murder, manslaughter and rape, are triable only on indictment. The least serious offences, known as summary offences, are tried by the Magistrate, who sits without a jury. The offences triable either way can be tried either by the Magistrate or by a judge sitting with a jury, depending on the circumstances of the case, the election of the defendant and the agreement of the prosecution.

26. In addition to trying summary offences (and offences triable either way which it has been decided should be tried summarily), the Magistrate also sits as a court of preliminary inquiry for the purpose of deciding whether there are sufficient grounds for committing an accused person to the High Court for trial on indictment. Where the Magistrate has convicted, after summary trial, a person charged with an offence triable either way, he may, if he thinks that a more severe penalty is called for than he has power to impose, commit that person to the High Court for sentence.

27. The Magistrate usually sits in open court to which the public and the media are admitted.

28. Cases involving persons under 16 years of age are usually heard in the Juvenile Court. This is a specially constituted Magistrate's Court which is held at a different time. Only limited categories of people may be present.

Appeals in criminal proceedings

29. Persons convicted in the Magistrate's Court or the High Court may appeal to the Court of Appeal against the sentence imposed if they pleaded guilty, or against the conviction or sentence imposed if they pleaded not guilty. In some cases a further appeal may lie to the Judicial Committee of the Privy Council, either as of right or with the leave of the Court of Appeal. It is always possible for the Judicial Committee to grant special leave to appeal.

Trials

30. As is usual in Common Law systems, criminal trials are adversarial in nature. An accused person is presumed innocent until proved guilty and the prosecution must prove his guilt beyond reasonable doubt. The rights of accused persons to a fair trial, with all the necessary procedural and other safeguards, are guaranteed by section 9 of the Constitution of Anguilla, which substantially corresponds to articles 14 and 15 of the International Covenant on Civil and Political Rights. Section 3 of the Constitution sets out the safeguards for persons in custody and specifically for those detained in connection with possible criminal proceedings. (For the machinery for enforcing these provisions, see para. 40 below.) Though there is no

formal legal aid programme in Anguilla, it is customary in serious criminal cases, such as murder or manslaughter, for the court to appoint an attorney-at-law, paid for out of public funds, to represent the accused person if he would otherwise be unrepresented.

Juries

31. In trials by judge and jury, the judge decides questions of law, sums up the evidence for the jury, instructs the jury on the relevant law, and either discharges the accused or passes sentence in accordance with the jury's verdict. The jury is the sole arbiter of facts and decides whether the prosecution has proved beyond reasonable doubt that the defendant is guilty. If not, the jury must find him not guilty. Where a jury cannot reach a unanimous verdict, it may be directed by the judge to bring in a majority verdict.

32. in general, persons between the ages of 21 and 60 years who are qualified to vote are eligible for jury service. Some particular categories of persons are not eligible. These include priests and members of the legal profession.

Coroner's courts

33. In Anguilla the Magistrate is the Coroner for the island. Violent or unnatural deaths, and sudden deaths where the cause is unknown, are investigated by the Coroner. In some, but not all, cases the Coroner must summon a jury to assist him.

Civil proceedings

34. Civil proceedings take place either in the Magistrate's Court or in the High Court. The Magistrate's Court has a limited civil jurisdiction embracing disputes where the amount in dispute does not exceed $15,000 and also certain matrimonial matters, such as custody and maintenance orders. Most other civil proceedings are heard in the High Court.

Appeals in civil proceedings

35. An appeal may lie in civil proceedings from the Magistrate's Court or the High Court to the Court of Appeal. A further appeal may lie from the Court of Appeal to the Judicial Committee of the Privy Council, either as of right or with the leave of the Court of Appeal. It is always possible for the Judicial Committee to grant special leave to appeal.

Administrative tribunals

36. Administrative tribunals are set up under various statutory powers, e.g. under the Labour Department Ordinance. These tribunals exercise judicial functions separate from the ordinary courts. Their advantage is that they are more accessible, less formal and less expensive than the courts and they also have the benefit of expert knowledge in their particular fields of expertise. They are of course subject to the control of the courts, e.g. if they exceed their powers or fail to observe the rules of natural justice.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

37. The basic means of protecting and enforcing human rights in Anguilla - in addition, that is, to the pressure of public opinion through the democratic process - is by invoking the relevant domestic law and the ordinary courts system, which, as explained above, is independent and impartial and is protected from political interference.

38. Under the Common Law system which operates in Anguilla, treaties which apply to Anguilla (including human rights treaties) do not themselves have the force of internal law and cannot be directly invoked before the courts as a source of individual rights, though the courts will, when possible, construe domestic legislation in such a way as to avoid incompatibility with the United Kingdom's international legal obligations. The usual method of giving effect to treaty obligations (when these require some change in existing law or practice) is to enact specific new legislation - this could be by an ordinance enacted locally or by an Order in Council made by the United Kingdom Government - or to amend existing legislation or to adapt administrative practices, as the case may require. Where this results in the creation or definition of specific legal rights and these are denied or interfered with (or there is a threat of such action), a remedy will be available in the courts through the ordinary procedures of civil litigation, or, in some cases, by criminal sanctions.

39. However, and over and above this, the Constitution of Anguilla does contain, in its chapter I (sects. 1-18), a fully elaborated set of provisions for the protection of the fundamental rights and freedoms of the individual. These provisions, which define in detail the rights concerned and the permissible limitations that may be imposed on them, derive directly from the European Convention on Human Rights and ultimately from the Universal Declaration of Human Rights. In times of emergency (as defined in the Constitution) the law may authorize measures to be taken which derogate from certain of the rights protected but only if those measures are reasonably justifiable for dealing with the situation then existing, a question which can ultimately be determined by the courts.

40. Section 16 of the Constitution provides that if any person alleges that any of the substantive provisions of chapter I has been, or is being, contravened in relation to him or to another person who is being detained, then, without prejudice to any other remedy that is lawfully available to him, he may apply to the High Court for redress. On such an application, the High Court may make such orders, issue such writs and give such directions as it may consider appropriate for enforcing the rights, under chapter I, of the person concerned. Moreover, if a question as to the contravention of any of the provisions of chapter I arises in any subordinate court, that court may (and must if any party so requests) refer it for determination by the High Court and must then dispose of the case in accordance with that determination. An appeal lies as of right to the Court of Appeal and thence to the Judicial Committee of the Privy Council from any decision of the High Court under chapter I.

41. It is to be noted that, as section 16 of the Constitution makes clear, these safeguards for the protection of human rights that are provided by the Constitution are in addition to the remedies that may exist in the ordinary law, e.g. an action for wrongful arrest or false imprisonment or a prosecution, under the Police Regulations, for the unlawful or unnecessary exercise of authority by a police officer.

42. It may be added that, under section 90A of the Magistrate's Court Procedure Act (Cap. 46), a convicted person may be ordered by the court, upon application by an aggrieved person, to pay him compensation for loss or injury suffered. An award of such compensation will, however, bar the recipient from pursuing any further civil proceedings in respect of the same matter.

IV. INFORMATION AND PUBLICITY

43. The text of United Nations human rights instruments to which the United Kingdom is a party in respect of Anguilla are usually publicized when they become available on the island. The texts may be published in the Official Gazette and in sections of the local press or placed in the Library and in schools. The Government's Department of Information and Broadcasting provides publicity on various human rights matters in news or discussion programmes originating from external sources such as the United Nations Radio in New York.

44. The Anguilla Constitution which, as explained above, makes enforceable provision for the protection of the fundamental rights and freedoms of the individual as set out in the Universal Declaration of Human Rights has been made available to the public. Other relevant laws of Anguilla, as referred to above, are, of course, also accessible to the public.

Annex II

BERMUDA

I. LAND AND PEOPLE

1. Although it is customary to refer to the whole territory of Bermuda as "the Islands of Bermuda", it in fact consists of a group of approximately 138 islands and islets situated in the Atlantic Ocean some 586 miles due west of Cape Hatteras in N. Carolina. The 10 principal islands, which form a chain about 22 miles long, are very close to one another and are connected by bridges. They vary in size but the main island, which is about 14 miles long and has an average width of 1 mile, contains about 9,000 acres of land. Its highest point is only 259.4 feet above sea level. The aggregate area of all the other islands is about 4,240 acres. There are no rivers or lakes.

2. The City of Hamilton has been the capital of Bermuda since 1815. Its population is approximately 1,100. The Town of St. George was Bermuda's first capital. Its population is 1,648.

3. Bermuda is believed to have first been discovered by a Spanish navigator in about 1503 but it was completely uninhabited when it was first settled by emigrants from England, acting under the authority of a Royal Charter, in 1612. In 1684 the Charter was annulled and the government of Bermuda was assumed by the British Crown. It has remained a British dependency ever since.

4. Background statistical information, using the most up-to-date information available, is as follows:

Per capita income	$23,980 (1993)
Gross national product	$1,408.8 million (provisional 1992/93)
Rate of inflation	2.5 (1993)
External debt	$80 million (provisional 1993)
Rate of unemployment	
Males	4 per cent (1991)
Females	2 per cent (1991)
Literacy rate	N/A
Population	59,040 (1993)
Population by reference to mother tongue	The great majority of the settled population of Bermuda have English as their mother tongue. There is a small Portuguese-speaking community but their exact number is not known. There are no other linguistic minority communities.

Life expectancy	
Males	78 years (1991)
Females	70 years (1991)
Infant mortality rate	11.6 per 1,000 live births (provisional 1992)
Birth rate	15.5 per 1,000 (provisional 1992)
Mortality rate	7.9 per 1,000 population (provisional 1992)
Maternal mortality rate	N/A
Fertility rate	60 per 1,000 women aged 15-44 (1992)
Percentage of population	
under 15 years old	
Males	5.076 per cent (1991)
Females	5.699 per cent (1991)
over 65 years old	
Males	2.199 per cent (1991)
Females	3.197 per cent (1991)
Percentage of population	
Rural	0 per cent
Urban	100 per cent
Percentage of households headed by women	34 per cent (1991)

5. A copy of the Bermuda Digest of Statistics 1993, which contains a number of other useful statistics compiled and published by the Statistical Department of the Ministry of Finance of the Bermuda Government, is attached as appendix 1.

II. GENERAL POLITICAL STRUCTURE

A. System of government

Government

6. The present Constitution, which came into force on 2 June 1968, is contained in Schedule 2 to the Bermuda Constitution Order 1968 as amended from time to time. A copy of that Order in its current form is attached as appendix 2.

7. Chapter I of the Constitution, which is discussed in more detail in Part III below, contains provisions which protect the fundamental rights and freedoms of the individual. The main features of the Constitution, apart from chapter I, are as follows.

(a) The Executive

8. The Governor is appointed by the Queen on the advice of the United Kingdom Secretary of State for Foreign and Commonwealth Affairs, to whom he is responsible. Executive authority is vested in the Governor but he is required to obtain, and act in accordance with, the advice of the Cabinet, or a Minister acting under the general authority of the Cabinet, in the exercise of all his functions except in certain specified cases. These principally concern functions involving external affairs, defence, internal security and the police (for which the Governor retains direct responsibility, though he may delegate some responsibility in these matters to a Minister) and certain other specific functions which he is empowered to exercise either in his discretion (e.g. the appointment of three members of the Senate) or in accordance with the advice of, or after consultation with, or on the recommendation of, some other person or authority (e.g. the appointment of judges).

9. The Cabinet consists of a Premier and not less than six other Ministers. The Premier is the member of the House of Assembly who appears to the Governor to be the best able to command the confidence of a majority of its members. The other Ministers are appointed by the Governor, in accordance with the advice of the Premier: at least one but not more than two of them must be appointed from among the members of the Senate and the remainder from among the members of the House of Assembly. The Governor, acting in accordance with the Premier's advice, may also appoint Parliamentary Secretaries (to assist Ministers) from among the members of the Senate and the House of Assembly, but there may not be more than 12 Ministers and Parliamentary Secretaries appointed from among the members of the House of Assembly.

10. The Cabinet is collectively responsible to the Legislature for any advice which it gives to the Governor or which is given to him under its general authority and for all things done by a Minister in the execution of his office. If the House of Assembly passes, by an affirmative majority of all its members, a resolution of no confidence in the Government, the Governor must either dismiss the Premier (and all the other Ministers then also vacate their offices) or dissolve the Legislature.

11. The Cabinet is summoned only by the authority of the Premier and he (or, in his absence, another Minister appointed by him) presides over its meetings. Portfolios are allocated to individual Ministers by the Governor acting in accordance with the Premier's advice but, except for certain limited purposes, these may not include the matters for which the Governor retains direct responsibility (external affairs, defence, etc.) or certain other specified matters (e.g. the judicial functions of the courts, the conduct of criminal prosecutions, and appointments, etc. to public offices).

12. The Constitution also establishes a Governor's Council for the purpose of considering matters for which the Governor retains direct responsibility. This Council consists of the Governor (as Chairman), the Premier, and not less than two or more than three other Ministers appointed by the Governor after consultation with the Premier.

13. The Constitution also requires the Governor to appoint an Opposition Leader whom he is obliged to consult in the exercise of various of his functions (and on whose advice he is, in certain cases, obliged to act). The Opposition Leader is the member of the House of Assembly who is the leader of the largest opposition party in that House or, if there is no party in that position, the member of that House who appears to the Governor to be acceptable as Opposition Leader to a majority of opposition members.

14. Except in relation to certain offices for which specific provision is made by the Constitution, the power to appoint persons to public offices and to remove and exercise disciplinary control over persons so appointed is vested in the Governor, acting in accordance with the recommendation of the Public Service Commission. This Commission consists of a Chairman and four other members, all of whom are appointed by the Governor, acting after consultation with the Premier, who must first have consulted the Opposition Leader. Members of the Commission, who may not themselves be public officers or members of the Legislature and who are not eligible to be appointed to a public office for a period of five years after they cease to be members of the Commission, are appointed to the Commission for a fixed term of between three and five years and are in the meantime protected from arbitrary removal from office.

(b) The Legislature

15. There are two Houses of the Bermuda Legislature: the Senate and the House of Assembly. There are 11 Senators, of whom 5 are appointed by the Governor in accordance with the advice of the Premier, 3 are appointed by him in accordance with the advice of the Opposition Leader and 3 are appointed by him in his discretion. There are 40 members of the House of Assembly, all of whom are elected. To be qualified for appointment to the Senate or for election to the House of Assembly, a person must be a Commonwealth citizen of the age of 21 years or more and must possess "Bermudian status" under the relevant law. A candidate for election must also be ordinarily resident in Bermuda. There are also a number of positive disqualifications in both cases: e.g. if the person in question is of unsound mind, or is currently serving a sentence of more than 12 months' imprisonment, or has been convicted of certain election offences, or holds a public office, or has failed to disclose an interest in a government contract.

16. Voters in elections to the House of Assembly must be Commonwealth citizens of the age of 18 years or more who possess Bermudian status and are ordinarily resident in the constituency in which they seek to be registered as voters. Again, there are certain positive disqualifications: e.g. being of unsound mind, or being currently under sentence of imprisonment (in certain circumstances), or having been convicted of certain election offences.

17. For electoral purposes Bermuda is divided into 20 constituencies, each of which returns two members of the House of Assembly. Constituency boundaries are reviewed periodically (not less than three years nor more than seven years from the previous review) by a Constituency Boundaries Commission. This consists of a Chairman and a judicial member (i.e. a person who holds or has held high judicial office) and four other members: the Chairman and the judicial member are appointed by the Governor, acting in his discretion; the other members are appointed by him from among the members of the two Houses of the Legislature, two of them in accordance with the advice of the Premier and two in accordance with the advice of the Opposition Leader. The function of the Commission is to recommend such changes (if any) in existing constituency boundaries as, having regard to certain factors (which expressly do not include the racial distribution of voters), will ensure that the constituencies contain, so far as reasonably practicable, equal numbers of persons qualified to be registered as voters. Its recommendations are laid before the House of Assembly and, when approved by the House (with or without modifications), take effect as from the next dissolution of the Legislature.

18. Sessions of the Legislature must be held so that the interval between the end of one session and the beginning of the next does not exceed 12 months. In practice, the Legislature meets much more frequently than this. The Governor must in general act in accordance with the advice of the Premier in deciding both when to prorogue the Legislature (i.e. bring its current session to an end without dissolving it) and when to dissolve it (and thus cause the holding of a general election); but he may, exceptionally, reject the Premier's advice to order a dissolution if he considers that the government of Bermuda can be carried on without it and that it would not be in the interests of Bermuda. The Legislature must in any event be dissolved not later than five years from its first sitting after the previous general election. A general election must be held not more than three months after each dissolution and the Governor must, as soon as practicable after each general election, proceed to the appointment of the members of the Senate.

19. The Legislature has the power to make laws on any subject. Laws are made in the form of bills which, when passed by both Houses, are presented to the Governor for assent on behalf of the Queen. (There are, however, restrictions on the powers of the Senate in relation to certain financial measures and also on its power to block indefinitely other bills that have been passed by the House of Assembly. These restrictions substantially reflect the corresponding restrictions on the powers of the House of Lords in the United Kingdom Parliament.) When assented to, bills become law as acts. In deciding whether to assent or to withhold assent or to reserve a bill "for the signification of Her Majesty's pleasure" (i.e. for the decision of the Secretary of State), the Governor must act in accordance with the usual rules regulating the exercise of his functions, except that he is required to reserve certain categories of bills unless he has previously been authorized by the Secretary of State to assent: these categories include bills which appear to him to be inconsistent with any of the United Kingdom's international obligations or to affect any of the matters for which he retains direct responsibility. The United Kingdom Parliament retains the power to legislate for Bermuda, and various Acts of Parliament (especially those enacted to enable effect to be given to international obligations) authorize legislation to be made for Bermuda (as for other dependent territories) by Order in Council.

Religion

20. Freedom of religion is expressly guaranteed by section 8 of the Constitution.

B. The law

The courts

21. The courts structure in Bermuda consists of the Supreme Court and the Court of Appeal (from which appeals lie in certain cases to the Judicial Committee of the Privy Council) and also a Magistrate's Court, the Special Court, Coroner's Courts and various administrative tribunals. These are all discussed in more detail in the following paragraphs.

22. The Supreme Court is established, and its composition is regulated, by sections 73 to 76 of the Constitution. The Supreme Court has a very wide original jurisdiction in both civil and criminal matters and also has jurisdiction to entertain appeals from subordinate courts, again in both civil and criminal matters. The judges of the Supreme Court consist of the Chief Justice and such number of Puisne Judges as a law enacted by the Legislature may prescribe. The Chief Justice is appointed by the Governor after consultation with the Premier, who must in turn have consulted the Opposition Leader, and the Puisne Judges are appointed by the Governor after consultation with the Chief Justice. The Governor also has the power, acting after consultation with the Chief Justice, to appoint Assistant Justices (who have the same powers as Puisne Judges) whenever the state of business in the Supreme Court so requires. Section 74 of the Constitution contains provisions safeguarding the security of tenure (and thus the independence) of the judges of the Supreme Court by protecting them from removal from office except for proven inability or misconduct as established by a judicial tribunal.

23. The Court of Appeal is established, and its composition is regulated, by sections 77 to 80 of the Constitution. The Court of Appeal entertains appeals on decisions of the Supreme Court given in either its original or its appellate jurisdiction and in both civil and criminal matters. In certain cases a further appeal lies from the Court of Appeal to the Judicial Committee of the Privy Council, either by leave or (as in human rights cases arising under sect. 15 of the Constitution) as of right. The judges of the Court of Appeal, who consist of the President and such number of Justices of Appeal, not being less than two, as a law enacted by the Legislature may prescribe, are appointed by the Governor in his discretion from among persons who currently hold or who have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court. The security of tenure of the judges of the Court of Appeal is protected, under section 78 of the Constitution, in the same way as that of the judges of the Supreme Court.

24. The Governor, acting after consultation with the Chief Justice, has the power to appoint two or more persons to be Magistrates - one of them is designated as the Senior Magistrate - and each such Magistrate is empowered to preside over a Magistrate's Court which has both criminal and civil

jurisdiction. In criminal cases, the Magistrate, sitting alone and without a jury, tries those offences (the less serious ones) which are classified as "summary offences" and sits as a court of preliminary inquiry to determine whether there are sufficient grounds for committing accused persons to the Supreme Court for trial on indictment (i.e. by a judge and jury) for the more serious offences. Certain offences, known as "either way" offences, may be tried either summarily in the Magistrate's Court or on indictment in the Supreme Court, at the accused person's election. When a person has been convicted of an "either way" offence after summary trial in the Magistrate's Court, the Magistrate may, if he thinks that a severer sentence is warranted than he can impose under his own limited sentencing powers, commit that person to the Supreme Court for sentence. In civil matters, the jurisdiction of the Magistrate's Court is limited to cases involving claims, not exceeding $10,000, for debt or for damages for breach of contract or ordinary civil wrongs.

25. Bermuda law also provides for a Special Court to be constituted as occasion requires to exercise any jurisdiction that may be conferred on it by an Act of the Legislature. Each Special Court so constituted consists of a Chairman, who is either the Senior Magistrate or another Magistrate appointed by the Senior Magistrate, and two other members (of whom at least one must be a woman) selected by the Chairman from a panel of at least six persons (including at least three women) appointed by the Governor. A Special Court deals summarily with the cases coming before it but any party to such a case is entitled to be legally represented in the proceedings. Cases involving children are generally dealt with by a Special Court which, when exercising that jurisdiction, is known as "the Children's Court". All cases involving persons under 16 years of age are dealt with by a Special Court except for a few very serious cases, such as those where the charge is murder or attempted murder or manslaughter.

26. The Governor is empowered by law to appoint two or more persons to be Coroners in Bermuda and may appoint one of them to be Senior Coroner. All cases where there is reason to believe that a person has died of unnatural causes or in suspicious circumstances must be reported to a Coroner. He then has the function of deciding whether to order the carrying out of a post-mortem examination and whether to hold an inquest into the death, for which purpose he may, if he thinks fit, be assisted by a jury.

27. Bermuda law also provides for the establishment, and regulates the functions, of a number of administrative tribunals to inquire into specific matters where a more informal procedure or more specialist expertise may be required or where the nature of the inquiry is not essentially judicial. For example, under the Development and Planning Act 1974 tribunals of three or more persons may be appointed to hold public inquiries into objections and representations made in relation to development plans, while under the Misuse of Drugs Act 1972 a tribunal may be appointed to advise the Minister on whether he should give a direction prohibiting a particular medical practitioner from supplying controlled drugs.

Procedure in criminal cases

28. As indicated above, criminal cases in Bermuda are tried either summarily (by a Magistrate's Court) or an indictment (by a judge and jury in the Supreme Court). In each case, the procedure is substantially similar to that obtaining in corresponding circumstances in England and Wales. Trials are "adversarial" in nature and an accused person is presumed innocent until proved guilty beyond reasonable doubt. The right of an accused person to a fair trial, with all the necessary procedural and other safeguards, is guaranteed by section 6 of the Constitution, which substantially corresponds to articles 14 and 15 of the International Covenant on Civil and Political Rights. Section 5 of the Constitution sets out the safeguards for persons in custody and specifically for those detained in connection with possible criminal proceedings. A machinery for enforcing these provisions is provided by section 15 of the Constitution (see para. 34 below).

29. Where a trial takes place on indictment in the Supreme Court it is conducted by a judge sitting with a jury. The jury is drawn from persons who are qualified for, and not exempt from, jury service. All persons who are not over the age of 65 years and who are registered as parliamentary electors are so qualified unless they are subject to specific disqualification, e.g. because they cannot read and write the English language or because they are blind, deaf or dumb or mentally disabled or because they are detained in prison or in a mental hospital. Some persons may, though qualified, claim exemption from jury service: e.g. Ministers, Magistrates and other members of the legal profession. In a jury trial the judge is the sole arbiter of the law and has the duty to direct the jury on the law applicable to the case and to sum up the evidence for its consideration; but the jury is the sole arbiter of the facts as they appear from the evidence and, as explained above, must be satisfied beyond reasonable doubt before it may return a verdict of guilty. If it is not so satisfied, the accused person must be acquitted. In general, the verdict of a jury must be unanimous but in certain circumstances a jury which has been unable to reach unanimity may be permitted to return a majority verdict supported by nine or more jurors. All verdicts must be delivered in open court by the foreman of the jury in the presence of all the members of the jury.

Responsibility for prosecutions

30. As a general rule, the responsibility for initiating criminal proceedings rests with the Bermuda Police Force. However, the ultimate authority in relation to the prosecution process is vested by the Constitution (sect. 71) in the Attorney General who is given the power, in any case in which he considers it desirable so to do, to institute and undertake criminal proceedings against any person before any court in Bermuda; to take over and continue any such proceedings that have been instituted by any other person or authority; and to discontinue any such proceedings, whether they were instituted by himself or by any other person or authority. The power to take over and continue proceedings and the power to discontinue proceedings are vested in him to the exclusion of any other person, and in the exercise of all his powers in relation to the control of prosecutions he is expressly exempted from the direction or control of any other person or authority. As a rule, the office of Attorney General is a public office (i.e. an office in the civil

service) the holder of which is appointed by the Governor acting in his discretion; and the Attorney General's security of tenure, and thus his independence from outside pressure, is safeguarded by provisions (in sect. 86 of the Constitution) substantially the same as those applying in the case of judges of the Supreme Court and of the Court of Appeal (see paras. 23 and 24 above). However, the Constitution contemplates that the office of Attorney General may sometimes be held by a member of the Legislature, and it provides that in that case his functions in relation to criminal prosecutions (and all the safeguards for his status and his independence in the exercise of those functions) shall be transferred to a separate Director of Public Prosecutions.

Police and prisons

31. The constitution and administration of the Bermuda Police Force is regulated by the Police Act 1974. Subject to that Act, "ministerial" responsibility for the police is reserved to the Governor, acting in his discretion (see para. 9 above) but the Governor may, in his discretion and with the prior approval of the Secretary of State for Foreign and Commonwealth Affairs, delegate all or part of that responsibility to the Premier or to another Minister designated by him after consultation with the Premier. Prisons in Bermuda are administered by the Prisons Department under the supervision of the Commissioner of Prisons (a public officer) and subject to the general direction and control of the Minister of Health, Social Services and Housing.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

A. Authorities having jurisdiction affecting human rights

32. Chapter I of the Constitution of Bermuda (sects. 1-16) provides the basic legal framework for securing the fundamental rights and freedoms of every person in Bermuda. This chapter, in sections 1 to 14, contains legally enforceable provisions ensuring protection of the right to life, protection from inhuman treatment, protection from slavery and forced labour, protection from arbitrary arrest or detention, protection for the privacy of home and other property, protection of freedom of movement, protection from discrimination on grounds of race, place of origin, political opinions, colour or creed, and protection from deprivation of property, and also ensuring the protection of the law (which covers the right to a fair trial, and all related safeguards, in both criminal and civil matters).

33. Section 15 of the Constitution confers on any person who alleges that any of the provisions of sections 1 to 14 has been, is being, or is likely to be contravened in relation to him, the right to make direct application to the Supreme Court for redress. If any question as to the contravention of any of those provisions arises in proceedings in any subordinate court, that court must refer that question to the Supreme Court. The Supreme Court has the power to hear and determine any such application or reference and to make such orders, issue such writs and give such directions as it considers appropriate for enforcing or securing the enforcement of the relevant provisions. An appeal lies as of right from the Supreme Court to the Court of Appeal and thence to the Judicial Committee of the Privy Council against any determination made under section 15.

34. The right of access to the Supreme Court conferred by section 15 of the Constitution is expressly without prejudice to any other remedy which is lawfully available to the complainant. Many contraventions of a person's fundamental human rights will indeed found alternative causes of action in the courts. For example, a person unlawfully deprived of his personal liberty may bring, or have brought on his behalf, civil proceedings to secure his release (by making an application for a writ of habeas corpus). In addition, he may bring an action for damages for false imprisonment, wrongful arrest or assault or for other violations of his civil rights, depending on the facts. In some cases, the criminal law may also be invoked.

35. In the particular field of discrimination (e.g. on grounds of race, sex, marital or personal status, etc.) there are also some very far-reaching protective provisions (and corresponding enforcement machinery) under the Human Rights Act 1981, as amended. (A copy of this Act in its current form is provided in appendix 3.) The Act prohibits discrimination in a wide range of activities and circumstances (e.g. in the provision of goods, facilities and services and in relation to the membership, etc., of organizations). It expressly prohibits the publication of inflammatory racist material or incitement to racial hostility and it also prohibits sexual harassment in employment. It contains various provisions for the invalidation or rectification of legal instruments which have a discriminatory element.

36. The principal machinery for securing compliance with the Human Rights Act 1981 is a Human Rights Commission whose members are appointed by the Governor on the advice of the Premier after the Premier has consulted the Opposition Leader. The Commission is required to investigate complaints of discrimination in contravention of the Act (and has extensive powers for this purpose) and, if possible, to settle them by its good offices. Where such a settlement is not possible, the Commission may (with the consent of the Attorney General) institute criminal proceedings or, where a prosecution would not be appropriate, refer the case to the Minister, who may then refer it to a board of inquiry. A board of inquiry, if it finds that there has been a contravention of any provision of the Act, has the power to order full compliance with that provision and also to order the rectification of any injury caused and the payment of financial restitution for it. If it considers that such an order will not be obeyed (or if such an order is in fact not obeyed, which is itself an additional criminal offence), it may refer the case to the Attorney General with a view to a prosecution. In addition to its investigative, conciliation and enforcement functions, the Commission has various educational and promotional duties in connection with the elimination of discrimination and also has a general duty to encourage an understanding of the fundamental rights and freedoms of the individual guaranteed by chapter I of the Constitution.

37. Paragraphs 35 and 36 above explain the present position in relation to discrimination on grounds of race, etc. However, the Government of Bermuda has acknowledged that, although progress has been made in achieving equality in the community, further measures need to be taken. Accordingly, in June 1994 the Minister of Human Affairs and Information published a White Paper which set out the Government's proposals to that end. These include the creation of a Commission for Unity and Racial Equality to promote equality of opportunity and to work towards the elimination of systemic racial

discrimination; the enlargement of the powers, scope and function of the Human Rights Commission; and the designation of certain racist acts as offences under the Criminal Code. A copy of the White Paper, entitled "Eliminating prejudice and discrimination", is provided in appendix 4.

B. Remedies, compensation and rehabilitation

38. Paragraph 33 above describes the powers of the Supreme Court to grant redress for the violation of a person's fundamental human rights as guaranteed by chapter I of the Constitution, and attention is also drawn to section 5 (4) of the Constitution which provides that any person who is unlawfully arrested or detained by any other person shall be entitled to compensation from that other person. Paragraph 36 above describes the machinery established by the Human Rights Act 1981 for securing redress (including, in appropriate cases, the payment of compensation) to victims of unlawful discrimination. Apart from these provisions, there is no provision in the law of Bermuda which expressly confers a right to compensation or rehabilitation on a victim of a human rights violation as such, but such a person would, as noted above, very often have a remedy available to him under the ordinary law by virtue of which he could obtain redress (including damages) for the infringement of his ordinary civil rights which the human rights violation would also constitute.

39. Although not solely concerned with circumstances in which there has been a violation of a person's human rights, the provisions of the Criminal Injuries (Compensation) Act 1973 are also relevant in this context. Under this Act, where a person has been killed or injured and the death or injury is directly attributable to a crime of violence committed by any other person, an application for compensation may be made to the Criminal Injuries Compensation Board which is established by the Act. If satisfied as to the facts, and having regard to various factors specified in the Act, the Board may order compensation to be paid out of public funds to or for the benefit of the victim, or (if he died) to or for the benefit of his dependants, or (in certain circumstances) to a person who incurs expense in looking after the victim or as a result of his death. The Board consists of five members appointed by the Governor on the advice of the Premier, of whom one (the Chairman) is a judge of the Supreme Court, one is a qualified medical practitioner and one is a lawyer in private practice in Bermuda. A copy of the Criminal Injuries (Compensation) Act 1973 in its current form - the original version of the Act has been amended from time to time - is provided in appendix 5.

Legal aid

40. The law of Bermuda provides for legal aid to be granted in the following cases:

(a) Trials on indictment, preliminary inquiries into charges of indictable offences and summary trials of "either way" offences;

(b) Civil proceedings in the Supreme Court or in a Magistrate's Court; and

(c) Appeals in criminal or civil cases.

C. Constitutional protection of human rights: derogations, etc.

41. As explained in paragraph 32 above, chapter I of the Constitution of Bermuda guarantees and protects the fundamental rights and freedoms of the individual. This chapter derives directly from the European Convention on Human Rights and ultimately from the Universal Declaration of Human Rights. The rights and freedoms specified in it are subject only to the limitations which are also specified and which are designed to ensure that the enjoyment of his rights and freedoms by any individual does not prejudice those of others or the public interest. Section 14 of the Constitution permits a law to authorize measures to be taken which derogate from certain specified provisions of chapter I during a period of public emergency but only to the extent that those measures are reasonably justifiable for dealing with the situation that then exists. Whether the measures actually taken are so justifiable is a question that can ultimately be determined by the courts.

D. Effect of human rights instruments in national law

42. Under the Common Law system which operates in Bermuda, treaties which apply to Bermuda (including human rights treaties) do not themselves have the force of internal law and cannot be directly invoked before the courts as a source of individual rights, though the courts will, when possible, construe domestic legislation in such a way as to avoid incompatibility with the United Kingdom's international legal obligations. The usual method of giving effect to treaty obligations (when these require some change in existing law or practice) is to enact specific new legislation or to amend existing legislation or, as the case may require, to adapt existing administrative practices. Any legislation that is necessary may take the form of an Act of the Bermuda Legislature (or an instrument made under such an Act) or an Order in Council made under an Act of the United Kingdom Parliament specifically authorizing the making of such an Order. Where these measures result in the creation or definition of specific legal rights and these are denied or interfered with (or there is a threat of such action), a remedy will be available in the courts through the ordinary procedures of civil litigation or, in some cases, by criminal sanctions.

IV. INFORMATION AND PUBLICITY

43. The text of the Constitution of Bermuda and other Bermuda laws relevant to human rights are included in the publication known as the Revised Laws of Bermuda which is kept up to date under the authority of the Attorney General. Complete sets of the Revised Laws of Bermuda are maintained by the Bermuda Archives, the Bermuda College Library and the Public Library and the public have access to these.

44. The drafts of the reports in respect of Bermuda that are to be submitted to the treaty monitoring bodies under the relevant human rights instruments are prepared by the responsible departments of the Bermuda Government and are then finalized by the United Kingdom Government.

Annex III

BRITISH VIRGIN ISLANDS

I. LAND AND PEOPLE

1. The resident population of the British Virgin Islands (BVI) grew by 47 per cent from 1980 to the 1991 census, when it was estimated at 16,108. The population density was recorded at 109 per square kilometre (282 per square mile). It is estimated that about 40 per cent of the population are immigrants from the Commonwealth Caribbean, most being from St. Kitts-Nevis and St. Vincent. A further 10 per cent are from North America, Europe and other countries; the fastest growing group is from the Dominican Republic. Other statistical information shows the following:

	1991
Per capita income (1991)	US$ 10,200
Gross domestic product	US$ (mill) 210.19
Rate of inflation	Not available
External debt (EC$m)	Not available
Rate of unemployment	3.3 per cent
Adult literacy rate	100.0 per cent
Percentage of population speaking English as mother tongue	90 per cent
Life expectancy: males	73 years
females	75 years
Infant mortality rate (per 1,000)	23.9 per cent
Maternal mortality rate	-
Fertility rate	2.4 per cent
Percentage of population	
under 15	22.0 per cent
65 and over	6.0 per cent
Population	16,108
Percentage of population in rural and urban areas	82.0 per cent Tortola 18.0 per cent Other Islands
Percentage of households headed by women	13.0 per cent

Religions:

The principal denominations are Methodist 32.9 per cent, Anglican 16.7 per cent, Roman Catholic 10.5 per cent, Church of God 9.2 per cent, Seventh Day Adventist 6.3 per cent, Baptist 4.7 per cent and Pentecostal 4.1 per cent.

II. GENERAL POLITICAL STRUCTURE

A. System of government

2. The islands which now constitute the BVI were first settled by English planters in the late seventeenth century and early eighteenth century and achieved the status of a separate colony, with its own legislature, in 1773. There were various constitutional changes over the years and the "presidency" of the BVI became part of the colony of the Leeward Islands in 1872. This continued until 1956 when the Leeward Islands were de-federated and the presidencies of Antigua, St. Kitts-Nevis-Anguilla, Montserrat and the BVI again became separate colonies with their own separate legislative and other institutions, but administered by the Governor of the Leeward Islands until 1960 when that office was abolished. Unlike other former Leeward Islands, the BVI did not become part of the West Indies Federation, which was formed in 1957 but was dissolved in 1962.

3. The Constitution of the BVI has been modified several times since 1956 and is now contained in the Virgin Islands Constitution Order 1976, as amended by the Virgin Islands (Constitution) (Amendment) Orders 1979, 1982, 1991 and 1994. (Copies of these instruments are provided in appendices 1 to 5.) It provides for a "Westminster style" form of Parliamentary government, with a Governor (representing the Crown), an Executive Council (corresponding to the Cabinet) and an almost entirely elected Legislative Council.

4. The Governor is appointed by the Queen on the advice of the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom to whom he is responsible for the exercise of his functions. He presides over the Executive Council, which he is, in general, required to consult and on whose advice he is then required to act. Ministers (who, together with the Governor himself and the Attorney General, are the members of the Executive Council: see para. 5 below) may, on the Chief Minister's advice, be given responsibility for the conduct of any government business, including the administration of government departments. But the Governor retains direct responsibility for (and is not required to consult the Executive Council on) certain matters, notably defence, external affairs, internal security (including police), the public service and the administration of the courts. He also has reserved legislative powers, under the authority of the Secretary of State, to procure the passage through the Legislative Council of laws which he considers are necessary or expedient for the purposes of any of the matters for which he is directly responsible. He is empowered to delegate some of his responsibilities for these matters to a Minister.

5. The Executive Council comprises the Governor, the Chief Minister, not less than two or more than three other Ministers and the Attorney General as ex officio member.

6. The Legislative Council comprises the Governor, a Speaker elected by the Legislative Council from persons outside its membership, nine elected members representing nine separate electoral districts, four elected members representing a single, island-wide electoral district, and the Attorney General in an ex officio capacity.

The powers of the Legislative Council

7. Subject to the provisions of the Constitution, the Legislative Council regulates its own proceedings. It may make laws on any subject, which it does in the form of bills which, having being passed by the Council, are presented to the Governor for his assent. When assented to, they become ordinances. Though the Governor has the power to refuse assent or to reserve a bill for signification of Her Majesty's pleasure, in practice most bills are government bills, drafted in the Attorney General's Chambers and approved by the Executive Council before being introduced in the Legislative Council. Formally, all ordinances are subject to disallowance by the Queen on the advice of the Secretary of State. The United Kingdom Government retains the right to legislate for the BVI by Act of Parliament or by Order in Council.

Parliamentary sessions

8. The maximum life of the Legislative Council is fixed at four years. But the Governor may dissolve it earlier, after consultation with the Chief Minister, thus paving the way for a general election before the expiry of its maximum period. A general election must be held within two months of a dissolution. There must be at least one session of the Legislative Council in every year. Prorogation, which is the way in which a session is terminated when the Legislative Council is not being dissolved, is effected by the Governor, acting in accordance with the Chief Minister's advice.

9. The legal framework for the conduct of elections is provided for in the Constitution and in the Elections Act 1994.

10. As explained in paragraph 6 above, the BVI is divided into nine electoral districts, each returning a single member, and one island-wide electoral district returning four members. Elections are conducted on the "first past the post" basis, that is to say, in each electoral district the candidate obtaining the most votes (or, in the island-wide electoral district, each of the four candidates obtaining the most votes) is deemed to have been elected.

11. Under the Constitution a person is qualified for election as a member of the Legislative Council if he is a British subject aged 21 or over, is deemed to belong to the BVI and is otherwise qualified as a voter within the BVI. But certain persons, though otherwise qualified in accordance with these provisions, are expressly disqualified by the Constitution from membership of the Legislative Council. These include persons who, by virtue of their own act, have allegiance to any foreign power, or who hold public office, or who are Ministers of Religion or who have been declared bankrupt or insane.

12. The Constitution also sets out the qualifications for voters. A person who is at least 18 years old, is a British subject and is deemed to belong to the Virgin Islands, and who is also either domiciled and resident in the BVI on the qualifying date or is, on that date, domiciled in the BVI and resident in the United States Virgin Islands is qualified to be registered as a voter. Again, there are certain specific disqualifications, e.g. because of insanity or because of a current prison sentence of more than 12 months.

13. The registration of voters is regulated by the Elections Act, 1994, which provides for an enumeration of voters "in such years as the Governor in Council may appoint on the recommendation of the Supervisor of Elections" but also provides for the continuous registration of voters through the year.

The party system: Government and Opposition

14. The BVI has several political parties, the principal ones currently being the Virgin Islands Party, the Concerned Citizens Movement and the United Party. But many candidates for election to the Legislative Council stand as independents. The Constitution provides that, if a single political party gains a majority of the elected seats in the Council, the Governor is to appoint as Chief Minister the elected member who is recommended by the majority of the elected members belonging to that party; if no party gains such a majority or if no such recommendation is forthcoming, he is to appoint as Chief Minister the elected member of the Council who, in his judgment, is best able to command the support of a majority of the elected members. The other Ministers (who, together with the Chief Minister, then form the Government) are appointed by the Governor, on the advice of the Chief Minister, from among the other elected members of the Council.

15. When a single party has gained a majority in the Council, the Government will usually consist of Ministers drawn from that party alone. But Governments reflecting or supported by a coalition of more than one party, or one or more parties and one or more independents, are not uncommon. At the last general election, in February 1995, the Virgin Islands Party won six of the seats, the Concerned Citizens Movement and the United Party each won two of the seats and independents won the remaining three seats. As a result, the Government was formed by the Virgin Islands Party (VIP) with the support of one of the independents. There was a by-election in one of the VIP seats in July 1995 but the VIP retained that seat and was then joined by one of the other members who had originally been elected as an independent. The current position is therefore that the Government is a coalition Government, supported by the seven VIP members and by one independent (who himself holds the portfolio of Communications Minister).

16. The Constitution also empowers the Governor to appoint an official Leader of the Opposition. He is the elected member of the Legislative Council who is recommended by the elected members belonging to the largest party in the Council which is opposed to the Government or, if no such recommendation is forthcoming or there is no single party in that position, the elected member who, in the Governor's judgment, is best able to command the support of the elected members who are opposed to the Government. Equal time is given to both the Government side and the Opposition side in the Legislative Council to express and defend their views on matters of public interest. The proceedings of the Council are open for the public to attend and are also broadcast live on the radio.

B. The law

The courts

17. The courts' structure in the BVI consists of a Magistrate's Court, a High Court and a Court of Appeal (which form part of the Eastern Caribbean Supreme Court) and the Judicial Committee of the Privy Council. The BVI falls within the jurisdiction of the Eastern Caribbean Supreme Court and is served by judges of that Court. The Eastern Caribbean Supreme Court and its judges serve not only the BVI but also a number of independent countries in the Eastern Caribbean and a number of other British dependent territories in the region. There are elaborate provisions, which form part of the law of all the countries and territories concerned, regulating the appointment and tenure of office of the judges and ensuring that they are protected from political interference from any source. So far as concerns the Magistrate and the holders of other subordinate judicial or quasi-judicial offices in the BVI (e.g. the local Registrar of the High Court), the Constitution of the BVI requires the Governor, in exercising his powers of appointment, etc., to consult with the Judicial Services Commission, which is itself established by the Constitution and which consists of the Chief Justice of the Eastern Caribbean Supreme Court, another judge of that Court and the Chairman of the Public Service Commission.

Criminal proceedings

18. The responsibility for initiating criminal proceedings in the BVI is generally exercised by the police who will, however, refer matters which might involve some difficulty to the Attorney General's Chambers for guidance or for the Attorney General to take over. In some cases the Attorney General may himself initiate proceedings.

19. There are three categories of criminal offences in the BVI: those triable only on indictment (that is, before a judge and jury); those triable summarily only; and those triable either way (that is, either on indictment or summarily).

20. Very serious offences, such as murder, manslaughter and rape, are triable only on indictment. The least serious offences, known as summary offences, are tried by the Magistrate, who sits without a jury. The offences triable either way can be tried either by the Magistrate or by a judge sitting with a jury, depending on the circumstances of the case, the election of the defendant and the agreement of the prosecution.

21. In addition to trying summary offences (and offences triable either way which it has been decided should be tried summarily), the Magistrate also sits as a court of preliminary inquiry for the purpose of deciding whether there are sufficient grounds for committing an accused person to the High Court for trial on indictment. Where the Magistrate has convicted, after summary trial, a person charged with an offence triable either way, he may, if he thinks that a more severe penalty is called for than he has power to impose, commit that person to the High Court for sentence.

22. The Magistrate usually sits in open court to which the public and the media are admitted.

23. Cases involving persons under 16 years of age are usually heard in the Juvenile Court. This is a specially constituted court presided over by a Magistrate who sits with assessors. These are lay persons appointed by the Governor. The Juvenile Court is different from, and independent of, the Magistrate's Court and is held at a different time and may sit in a different place from the Magistrate's Court.

Appeals in criminal proceedings

24. Persons convicted in the Magistrate's Court or the High Court may appeal to the Court of Appeal against the sentence imposed if they pleaded guilty, or against the conviction or sentence imposed if they pleaded not guilty. In some cases a further appeal may lie to the Judicial Committee of the Privy Council, either as of right or with the leave of the Court of Appeal. It is always possible for the Judicial Committee to grant special leave to appeal.

Trials

25. As is usual in Common Law systems, criminal trials are adversarial in nature. An accused person is presumed innocent until proved guilty and the prosecution must prove his guilt beyond reasonable doubt. Though there are no legislative provisions expressly guaranteeing the right to a fair trial, the procedural and other rules relevant to that right which are applied by the courts in the BVI are essentially similar to those applied by the courts in the United Kingdom and in other Common Law jurisdictions in the Caribbean. As noted above, the superior courts for the BVI are part of the Eastern Caribbean Supreme Court.

Juries

26. In trials by judge and jury, the judge decides questions of law, sums up the evidence for the jury, instructs the jury on the relevant law, and either discharges the accused or passes sentence in accordance with the jury's verdict. The jury is the sole arbiter of facts and decides whether the prosecution has proved beyond reasonable doubt that the defendant is guilty. If not, the jury must find him not guilty. Where a jury cannot reach a unanimous verdict, it may be directed by the judge to bring in a majority verdict.

27. In general, persons between the ages of 21 and 60 years who are qualified to vote are eligible for jury service. Some particular categories of persons are not eligible. These include priests and members of the legal profession.

Coroner's courts

28. In the BVI, the Magistrate is the Coroner for the Islands. Violent or unnatural deaths, and sudden deaths where the cause is unknown, are investigated by the Coroner. In some, but not all, cases the Coroner must summon a jury to assist him.

Civil proceedings

29. Civil proceedings take place either in the Magistrate's Court or in the High Court. The jurisdiction of the Magistrate's Court extends to claim and disputes in which the amount in dispute does not exceed US$ 20,000.

Appeals in civil proceedings

30. An appeal may lie in civil proceedings from the Magistrate's Court or the High Court to the Court of Appeal. A further appeal may lie from the Court of Appeal to the Judicial Committee of the Privy Council either as of right or with the leave of the Court of Appeal. It is always possible for the Judicial Committee to grant special leave to appeal.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

31. The basic means of protecting and enforcing human rights in the BVI - in addition, that is, to the pressure of public opinion through the democratic process - is by invoking the relevant domestic law and the ordinary courts system, which, as explained above, is independent and impartial and is protected from political interference.

32. Under the Common Law system which operates in the BVI, treaties which apply to the BVI (including human rights treaties) do not themselves have the force of internal law and cannot be directly invoked before the courts as a source of individual rights, though the courts will, when possible, construe domestic legislation in such a way as to avoid incompatibility with the United Kingdom's international legal obligations. The usual method of giving effect to treaty obligations (when these require some change in existing law or practice) is to enact specific new legislation - this could be a law enacted locally or an Order in Council made by the United Kingdom Government - or to amend existing legislation or to adapt administrative practices, as the case may require. When this results in the creation or definition of specific legal rights and these are denied or interfered with (or there is a threat of such action), a remedy will be available in the courts through the ordinary procedures of civil litigation, or, in some cases, through criminal sanctions.

IV. INFORMATION AND PUBLICITY

33. The text of the United Nations human rights instruments to which the United Kingdom is a party in respect of the BVI are usually publicized when they become available on the Islands. The texts may be published in the Official Gazette and in sections of the local press or placed in the library and in schools. The Government's Department of Information and Broadcasting provides publicity on various human rights matters in news or discussion programmes originating from external sources such as the United Nations radio in New York.

Annex IV

CAYMAN ISLANDS

I. LAND AND PEOPLE

1. The Cayman Islands are a dependent territory of the United Kingdom consisting of three islands: Grand Cayman, Cayman Brac and Little Cayman. The Territory has a total area of approximately 260 square kilometres, divided as follows: Grand Cayman, about 195 square kilometres; Cayman Brac, 39 square kilometres; and Little Cayman, 26 square kilometres. George Town, the capital of the Territory, is located on Grand Cayman.

2. According to the results of the census of population and housing conducted in October 1989, the resident population of the Cayman Islands was 25,355, compared with 16,677 in 1979 when the previous census was taken. Some 13,202 persons, or 52 per cent of the residents of the Territory, were Caymanians by birth. The census showed that 23,877 persons (94.2 per cent of the population) reside on Grand Cayman; 1,445 on Cayman Brac and 33 on Little Cayman. The population of George Town, the capital, is 12,972. The birth rate in 1991 was estimated at 18 per 1,000 and the death rate at 4 per 1,000.

Statistical Information

3. Other statistics are as follows:

Population	25,355
Per capita income (1991)	US$ 27,280
Gross domestic product (1991)	US$ 700 million
Rate of inflation (1992/1993)	2.5 per cent
External debt: net public sector debt (1991)	US$ 21.3 million
Rate of unemployed: males:	3 per cent
females:	4 per cent
Literacy rate	96 per cent
Percentages of population by reference to mother tongue	N/A
Life expectancy: male and females:	Average 77.1 years
Infant mortality rate: males:	4 per 1,000
females:	5 per 1,000
Maternal mortality rate	N/A
Fertility rate (1992)	371
Percentage of population under 15 and over 65 years of age	29 per cent

II. GENERAL POLITICAL STRUCTURE

A. System of government

General

4. The Cayman Islands are a British Dependent Territory.

5. The present Constitution of the Cayman Islands is contained in the Cayman Islands (Constitution) Order 1972, as amended by the Cayman Islands (Constitution) (Amendment) Order 1984, the Cayman Islands (Constitution) (Amendment) Order 1987, the Cayman Islands (Constitution) (Amendment) Order 1992 and the Cayman Islands (Constitution) (Amendment) Order 1993. Copies of these instruments are provided in appendices 1 to 5 respectively.

6. The Constitution provides for a modified form of "Westminster-style" Parliamentary government, with a Governor (representing the Crown), an Executive Council (substantially corresponding to the Cabinet) and a largely elected legislature, the Assembly, from which the Executive Council is drawn and to which it is answerable.

The Executive

7. The Governor, who is the head of the Executive, is appointed by the Queen on the advice of the Secretary of State for Foreign Affairs of the United Kingdom, to whom he is responsible for the exercise of those of his functions which the law does not require him to exercise on the advice of some other authority. In general, however, he is required to consult the Executive Council in the exercise of his functions and to act in accordance with its advice. But he is not required to consult the Council or to act in accordance with its advice in relation to certain matters for which he retains direct responsibility (see below) and he may also act contrary to its advice (if he obtains the approval of the Secretary of State) in cases where he considers this to be called for by considerations of public order, public faith or good government.

8. The Executive Council, at whose meetings the Governor usually presides, consists of three ex officio members (the Chief Secretary, the Attorney General and the Financial Secretary) and five other members, styled Ministers, who are elected by the elected members of the Assembly from among their own number. The Governor retains direct responsibility for defence, external affairs, internal security, the police and the public service, exercising this responsibility, as appropriate, through officials. The Chief Secretary holds the portfolio for Internal and External Affairs, the Attorney General holds the portfolio for Legal Affairs and the Financial Secretary holds the portfolio for Finance and Development. The five Ministers are responsible for other routine government business, each heading a Ministry to which a specific portfolio is assigned, with the permanent secretaries of the various departments within the Ministry implementing ministerial policy and overseeing the administration of these departments. Currently, the portfolios assigned to Ministers are as follows: Tourism, Environment

and Planning; Community Development, Sports, Youth Affairs and Culture; Agriculture, Communications and Works; Education and Aviation; and Health, Drug Abuse Prevention and Rehabilitation. The Constitution requires Ministers to exercise their individual responsibilities in accordance with the principle of collective responsibility.

The Legislature

9. The Legislature consists of the three ex officio members (the Chief Secretary, the Attorney General and the Financial Secretary), 15 elected members and (if he is not himself one of the elected members) a Speaker. (The Speaker is chosen by the elected members of the Assembly either from among their own number or from among persons who are qualified to be elected members.) Both candidates for elections to the Assembly and persons seeking to be registered as voters in such elections must possess certain prescribed residence and other qualifications establishing their close connection with the Cayman Islands. A candidate for election must have attained the age of 21 years and must not be otherwise disqualified (e.g. because he is a public officer or is of unsound mind or is serving, or has recently served, a long term of imprisonment or has been convicted of an offence connected with elections). A person seeking registration as a voter must have attained the age of 18 years and he, too, must not be otherwise subject to disqualification (e.g. because he is of unsound mind or because he is serving a long term of imprisonment or because of his involvement in an offence connected with elections).

10. For electoral purposes, the Cayman Islands are divided into six electoral districts, each returning a number of elected members to the Assembly in proportion to its population. Elections are not contested by political parties as such but in the most recent (1992) general election, in which there was a record turnout of more than 90 per cent of the Territory's 10,193 registered voters, 12 of the 15 seats were won by a group of candidates known as the National Team and 3 were won by independents. (The National Team was opposed to certain proposed changes to the Constitution which were accordingly not proceeded with when the Constitution was amended in 1993: see para. 23 below.) There must be a general election to the Assembly within two months of each occasion when it is dissolved and, if it has not been earlier dissolved by the Governor, acting on the advice of the Executive Council, each Assembly must be dissolved at the end of four years from when it first met after the previous general election. Not more than 12 months may elapse between one session of the Assembly and the next: in practice, the Assembly is in session much more frequently than that.

11. The Assembly may make laws on any subject. It exercises this power by passing bills which are presented to the Governor for his assent. He must then, in accordance with the usual rules governing the exercise of his functions, either assent to them or refuse his assent or reserve them for decision by the Secretary of State. There are certain categories of bills which he is required to reserve, including bills which appear to discriminate between one community or religion and another and bills which appear to be inconsistent with treaty obligations. The Governor has a reserved power,

exercisable with the prior approval of the Secretary of State, to compel the passage of legislation (or of legislation in a certain form) through the Assembly if he considers that this is required in the interests of public order, public faith or good government. Formally, all laws assented to by the Governor may be disallowed by the Queen on the advice of the Secretary of State. The United Kingdom Government retains the power to legislate directly for the Cayman Islands by Act of Parliament or by Order in Council.

12. As well as discharging its ordinary legislative functions, the Assembly exercises a general oversight over the activities of the executive Government and could, for example, defeat it on an issue of confidence or withhold financial provision. In addition, the Assembly appoints various committees of its members which scrutinize the work of particular government departments. The public takes a keen interest in the debates of the Assembly, which are widely reported in the local newspapers and on radio and television.

B. The law

The courts

13. The courts of the Cayman Islands, which are independent of the Executive and the Legislature and whose judges are not subject to the control or direction of any other person or authority, consist of the Cayman Islands Court of Appeal, the Grand Court and the subordinate courts. The principal subordinate courts are the Summary Courts but there are also Juvenile Courts, to deal with cases involving young offenders, and various administrative tribunals exercising a quasi-judicial jurisdiction. In certain cases an appeal lies from the Court of Appeal to the Judicial Committee of the Privy Council.

14. The Court of Appeal comprises a President and not less than two Justices of Appeal. They are appointed by the Governor, on the instructions of the Secretary of State, from among persons who hold or have held high judicial office in some part of the Commonwealth. The Constitution protects their independence from political or other interference by providing that a judge of the Court of Appeal, once appointed, cannot be removed from office during his ordinary term of office except for proven misconduct or incapacity as established by a judicial tribunal.

15. The Grand Court, which has unlimited jurisdiction in both criminal and civil cases, consists of a Chief Justice and such number of other judges as the law may from time to time prescribe. The judges of the Grand Court are appointed by the Governor from among persons who have practised as barristers or solicitors in England, or in some other Commonwealth country with comparable arrangements, for at least 10 years. The independence of the judges of the Grand Court from political or other interference is protected by provisions entrenching their tenure of office, similar to those applying to the judges of the Court of Appeal.

16. The Summary Courts have jurisdiction to try a wide range of minor offences summarily and also to commit persons for trial by the Grand Court on more serious charges, and they also have a limited civil jurisdiction.

A Summary Court consists either of a magistrate (sitting alone or with one or more Justices of the Peace) or of two or more Justices of the Peace (in which case its jurisdiction may be restricted). Magistrates are appointed by the Governor and must be professionally qualified, i.e. they must have practised as barristers or solicitors in England, or in some other Commonwealth country with comparable arrangements, for at least five years. Justices of the Peace do not have to be professionally qualified and the Governor may appoint any fit and proper person to be a Justice of the Peace.

17. Appeals lie in both criminal and civil cases from Summary Courts and Juvenile Courts to the Grand Court. The Grand Court also has a general jurisdiction to supervise the proceedings of subordinate courts and to make such orders, etc. as it considers appropriate for ensuring that justice is duly administered by them. Appeals lie from the Grand Court to the Court of Appeal and thence, in certain cases, to the Judicial Committee of the Privy Council.

Administration

18. The responsibility for the administration of the courts system rests effectively with the Chief Justice. The Attorney General is primarily responsible for the enforcement of the criminal law. (He is also the Government's principal legal adviser and has certain functions in the civil law as the representative of the Crown (or the public interest).) The Attorney General is expressly empowered by the Constitution to institute and undertake criminal proceedings against any person before any court for any offence, to take over and continue any such proceedings that have been instituted by any other person or authority and to discontinue any such proceedings that have been instituted by himself or any other person or authority. In the exercise of these powers he is not subject to direction or control from anybody else and, in order to insulate him from political interference, the Constitution protects his tenure of office in the same way as it protects the tenure of office of judges of the Court of Appeal and the Grand Court.

Police and prisons

19. As noted above, responsibility for the police is reserved to the Governor, but it is discharged, together with responsibility for prisons, as part of the Chief Secretary's portfolio. Probation services, together with other social services, fall within the portfolio of the Minister for Community Development, Sports, Youth Affairs and Culture. The crime rate in the Cayman Islands is very low by international standards.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

20. The basic means (in addition to the pressure of public opinion through the democratic process) of protecting and enforcing human rights in the Cayman Islands is by invoking the relevant domestic law and the ordinary courts system which, as explained above, is independent and impartial and is protected from political interference.

21. Under the Common Law system which operates in the Cayman Islands, treaties which apply to the Cayman Islands (including human rights treaties) do not themselves have the force of internal law and cannot be directly invoked before the courts as a source of individual rights, though the courts will, when possible, construe domestic legislation in such a way as to avoid incompatibility with the United Kingdom's international legal obligations. The usual method of giving effect to treaty obligations (when these require some change in existing law or practice) is to enact specific new legislation or to amend existing legislation or to adapt existing administrative practices, as the case may require. (Legislation for this purpose in the Cayman Islands might take the form of a law enacted by the Assembly or it might take the form of an Order in Council made by the United Kingdom Government applicable to a number of dependent territories, e.g. the Criminal Justice Act 1988 (Torture) (Overseas Territories) Order 1988, which gave effect to the United Nations Convention against Torture, etc. in the territories to which it applied, including the Cayman Islands.) Where this process results in the creation or definition of specific legal rights and these are denied or interfered with (or this is threatened), a remedy will be available in the courts by way of the ordinary procedures of civil litigation or, in some cases, by way of criminal sanctions.

22. A person in the Cayman Islands who needs legal advice or legal representation in the protection or enforcement of his rights but who lacks the financial means to procure it himself can obtain free assistance, i.e. the cost of such advice or representation will be borne by public funds. This legal aid is available in all cases before the Grand Court and in the more serious criminal cases before the Summary Courts.

23. There have in recent years been proposals to introduce into the Constitution of the Cayman Islands a "Bill of Rights", similar to those in the Constitutions of a number of other British dependent territories, which would set out and define, and expressly make legally enforceable, the fundamental human rights and freedoms of the individual. The most recent proposals to that effect, which it had been assumed commanded substantial support, became, however, an issue in the general elections which took place in 1992 when they were opposed (because of certain aspects of them) by the National Team whose candidates then won an overwhelming majority of the seats in the Assembly (see para. 10 above). Those particular proposals could therefore not be proceeded with and the provisions in question were not included, as had been originally envisaged, in the amendments to the Constitution which were made in 1993. But the general proposal to introduce an enforceable Bill of Rights into the Constitution remains under active consideration and a committee of the Assembly has been appointed to examine how it may best be taken further.

24. One amendment to the Constitution which was, however, made in 1993 was the incorporation of provision for the office of Complaints Commissioner (i.e. a sort of Ombudsman). The details of the functions, jurisdiction and powers of the Complaints Commissioner are to be spelled out in a law to be enacted by the Assembly and such a law is now in the course of preparation.

IV. INFORMATION AND PUBLICITY

25. The Government of the United Kingdom publishes, through Her Majesty's Stationery Office, the text of United Nations human rights instruments to which the United Kingdom is a party. Those instruments which also affect the Cayman Islands are published by the Cayman Islands Government Information Services, through the Government publication The Official Gazette. The Cayman Islands Government prepares the initial drafts of reports for submission by the United Kingdom Government to the bodies established under the various United Nations human rights instruments to monitor State party compliance with treaty obligations.

Annex V

FALKLAND ISLANDS

I. LAND AND PEOPLE

1. Situated in the South Atlantic, the Falkland Islands lie about 772 kms (480 miles) north-east of Cape Horn and about 480 kms (300 miles) distant from the nearest point on the South American mainland. They consist of about 200 islands, the largest being East Falkland and West Falkland, and their total land area is some 12,173 square kms (4,700 square miles).

2. Background statistical information, using the most up-to-date figures available, is as follows:

Per capita income	£18,859)	Official figures to calculate GNP and per capita income are not available. However, GNP is estimated to have been £40 million in 1992
Gross national product	£40 m.)	
Rate of inflation	0.89 per cent	(1992/93)
External debt	£104,283	
Rate of unemployment	No statistics available	
Literacy rate	99.5 per cent	
Population	2,121	(1991 census)
Percentage of population speaking English as mother tongue	99 per cent	
Life expectancy	Figures not available	
Infant mortality rate	No infant deaths recorded in last five years	
Birth rate	13 per 1,000	
Mortality rate	10 per 1,000	
Maternal mortality rate	No maternal deaths in last five years	
Fertility rate	56 per 1,000	
Percentage of population:		
Under 15 years old	Males under 15	10.1 per cent
	Females under 15	9.8 per cent
Over 65 years old	Males	4.9 per cent
	Females	3.9 per cent

Percentage of population	Rural	22.5 per cent (males 57 per cent, females 43 per cent)
	Urban	77.5 per cent (males 52.3 per cent, females 47.7 per cent)
Percentage of households headed by women	23.3 per cent	(including never married (6.5 per cent), married (5.8 per cent), widowed (7 per cent) and divorced (4 per cent))

(Most figures provided by Falkland Islands Government and the Report of the 1991 Census.)

3. The population is almost exclusively of British birth or descent and many can trace their origins in the territory back to the nineteenth century.

II. GENERAL POLITICAL STRUCTURE

A. System of government

Government

4. The Falkland Islands is a British Dependent Territory.

5. The present Constitution, which came into force on 3 October 1985, is contained in Schedule 1 to the Falkland Islands Constitution Order 1985. A copy is provided as appendix 1.

6. Chapter I of the Constitution, which is discussed in more detail in part III below, contains provisions which guarantee the fundamental rights and freedoms of the individual. The preamble to that chapter recites the right of all peoples to self-determination.

7. The main features of the Constitution, apart from chapter I, are as follows:

(a) The Governor is appointed by the Queen on the advice of the United Kingdom Secretary of State for Foreign and Commonwealth Affairs, to whom he is responsible. Executive authority is vested in the Governor but he is obliged to consult the Executive Council in the exercise of his functions, except in certain specified cases. The Governor is entitled to act against the advice of the Executive Council but, when he does, he must give a report, including his reasons for so doing, to the Secretary of State. The Executive Council consists of the Chief Executive and Financial Secretary, ex officio, and three elected members elected annually by the eight elected members of the Legislative Council from among their own number. The Governor summons meetings of the Executive Council and normally presides. The Governor

appoints, removes and exercised disciplinary control over public officers but the Constitution provides that in doing so he shall consult such persons or authority as may be prescribed by ordinance. (No ordinance has so far been promulgated for this purpose but the Governor's powers are in fact exercised on the recommendations of informally constituted boards and committees established to advise him in such matters.)

(b) The Legislative Council for the Falkland Islands consists of eight elected members (who alone can vote on matters coming before it) and two ex officio members (the Chief Executive and Financial Secretary), but the Constitution provides that the Attorney General has the right to take part in the proceedings of the Legislative Council (but not to vote) with the consent of the person presiding. The Governor is not a member of the Legislative Council but he, or in his absence another member of the Legislative Council appointed by the Governor, presides over its deliberations. The Governor "with the advice and consent of the Legislative Council" may make laws for the peace, order and good government of the Falkland Islands. Proposed laws are presented to the Legislative Council in the form of bills which, if passed by the Legislative Council, are presented for assent. The rules as to the enactment of laws are set out in Annex A to the Constitution. Laws are usually assented to by the Governor but in rare cases assent will be by the Queen through a Secretary of State. Paragraph 5 of Annex A to the Constitution prohibits the Governor from assenting to certain kinds of bills unless the bill contains a clause suspending the operation of the law "until the signification of Her Majesty's pleasure thereon". Once a bill is assented to, it becomes law as an Ordinance but any Ordinance to which the Governor has given his assent "may be disallowed by Her Majesty through a Secretary of State". So far as is known, no Falkland Islands Ordinance has been disallowed for over a hundred years. The Governor has a power under section 49 of the Constitution, notwithstanding that a bill has not been passed in the form it was introduced, or at all, to declare that the bill is to have effect as if it had been passed by the Legislative Council either in the form it was introduced in the Legislative Council or with such amendments that have been moved or proposed in the Council as the Governor thinks fit, and the Governor can assent to the bill in that form. The Governor cannot, however, exercise these special powers without prior instructions from the Secretary of State unless in his judgment the matter is so urgent that it is necessary for him to do so before having consulted the Secretary of State. The United Kingdom Government has retained the right to make laws for the Falkland Islands and, in exercise of its power to do so, frequently makes laws applying to the Falkland Islands relating to international matters, such as obligations under a treaty or convention applied by the United Kingdom Government to the Falkland Islands. The Governor convenes the sessions of the Legislative Council which must be held at least every 12 months. In practice, it meets, on average, four times a year. Any member may introduce bills or propose motions, and these may be passed by a simple majority. But bills or motions may not be proceeded with (and petitions may not be received) without the endorsement of the Governor if they would involve increases in taxes or public expenditure or the alteration of the salary, allowances or conditions of service (including pension rights) of public officers.

(c) The Legislative Council must be dissolved no later than four years after the previous general election but the Governor has the power to dissolve it earlier. There must be a general election within 70 days of a dissolution. In the event of a seat becoming vacant between general elections, a by-election (casual election) for the vacant seat takes place. An Electoral Ordinance was enacted in 1988; and it, and the provisions of the Constitution, govern elections of members of the Legislative Council. The Falkland Islands are divided into two constituencies: the town of Stanley and its neighbourhood, which make up the Stanley Constituency; and the rest of the country, which makes up the Camp Constituency. There are four elected members for each constituency and only persons who are registered as electors and are of the age of 21 years or more are entitled to stand for election. Of course, only persons who are registered as electors may vote at elections. The persons qualified to be registered as electors are persons who are Commonwealth citizens over the age of 18 years of age and who satisfy the residence qualifications. A Commonwealth citizen who was born in the Falkland Islands must have been resident in the Falkland Islands for the period of 12 months preceding the qualifying date for preparation of the register. A Commonwealth citizen not born in the Falkland Islands must have been resident in the Falkland Islands for five years immediately preceding the qualifying date. The qualifying date is 15 May in each year and, as the Constitution allows, "resident" is defined by the Electoral Ordinance 1988. The definition allows absences for business purposes, for holidays or for educational purposes (among other things) to be counted, subject to conditions, towards the qualifying period.

(d) The most recent general election was held on 14 October 1993 when 17 candidates offered themselves for the four Stanley seats and eight for the four Camp seats. All were independents.

(e) The judicial and legal system is described in more detail below. Provisions relating to the Supreme Court and Court of Appeal, including provisions regulating the appointment and the security of tenure of office of judges, are contained in chapter VIII of the Constitution.

Religion

8. Freedom of religion is expressly protected by section 9 of the Constitution.

History

9. Early settlement followed the taking of formal possession of West Falkland and "all the neighbouring islands", by Commodore John Byron in the name of the British Government in January 1765. An expedition led by Captain McBride established a settlement at Port Egmont on 8 January 1766. Apart from a period between June 1770 and January 1771, British occupation continued until 1774. British settlement and administration has been continuous since 1833, apart from a brief interruption when Argentina illegally occupied the Islands during April, May and June 1982.

10. Settlers and fresh capital were gradually attracted to the Islands. The Falkland Islands Company, which was incorporated by charter in 1851, acquired extensive tracts of land throughout the Islands. The centre of government was moved to Stanley in 1844 and the first legislative council set up in 1845. Settlers played an important part in its deliberations.

11. The early industry of the territory was the exploitation, mainly for their hides, of the wild cattle running freely over East Falkland. These wild cattle were descended from cattle introduced in the previous century. They were the property of the Crown and their slaughter was subject to licences issued by the Governor.

12. In 1842 Governor Moody suggested that sheep could be raised, and commercial sheep farming was first attempted on East Falkland where, by the year 1860, a considerable number were being run. During the succeeding decade a start was also made on West Falkland. Between the years 1870 and 1880 a change from cattle to sheep ranching took place and subsequently all of the wild cattle were killed off.

13. A period of steady prosperity followed and in 1885 the territory became self-supporting. Wireless communication with the outside world was opened in 1912. During the first quarter of the twentieth century, Stanley became a minor ship-repairing port and coaling station. By the 1930s the permanent population had increased to 2,500.

14. During the two world wars the Falkland Islands Company and other absentee farm landlords consolidated their hold over the local economy - reinvesting little. The economy stagnated and in the 1950s and 1960s emigration increased. Talks between the United Kingdom and Argentina about sovereignty continued during the 1960s, and in 1971 a communications agreement was signed between the Argentine and British Governments. For the following 10 years the only air link with the outside world was via the Argentine city of Commodoro Rivadavia. The Islands became increasingly dependent upon Argentina for outside supplies - especially oil. But Islanders adamantly refused to become part of Argentina.

15. The Falkland Islands were invaded and illegally occupied by Argentine military forces on 2 April 1982. A British task force was immediately despatched and, following a conflict in which over 1,000 British and Argentine lives were lost, the Argentine forces surrendered on 14 June 1982.

16. Since 1982 the pace of development on the Islands has accelerated: first, with British grant aid to assist in development and rehabilitation after the 1982 conflict; and then, after 1986, financed from income from the sale of fishing licences - mainly for catching illex squid. (The 1993/94 income from the sale of fishing licences was approximately £20 million). A new hospital, a new senior school, community leisure and sports facilities, port facilities, a new international airport, a modern telecommunications system and new roads and houses have all been built with funds provided by the British and Falkland Islands Governments.

17. After 1982 the Falkland Islands Company sold all its West Falkland farms into private local ownership. Its holdings in East Falklands (amounting to some 900,000 acres) were purchased by the Falkland Islands Government in May 1991. Over 95 per cent of the total land area is now owned by residents of the Falkland Islands.

B. The law

Administration

18. The courts structure consists of the Summary Court, the Magistrate's Court, the Supreme Court, the Court of Appeal and the Judicial Committee of the Privy Council and also a Coroner's Court. Their composition and jurisdiction are described in more detail below.

19. The Falkland Islands judiciary are entirely independent of the Government and are not subject to direction or control from the Executive or members of the Islands Legislative Council. The tenure of office, and thus the independence, of the President and Justices of the Court of Appeal and the Chief Justice is expressly entrenched in the Constitution. Responsibility for the administration of justice rests, effectively, with the Chief Justice for the Islands who is appointed by the Governor on instructions from the Secretary of State for Foreign and Commonwealth Affairs and is removable, during his ordinary term of office, only for proven misconduct or incapacity as established by a judicial tribunal. He must be a person who is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland or who has been qualified for at least 10 years to practise before such a court.

20. The current Chief Justice resides in England and visits the Islands as and when necessary. The principal resident judicial figure is the Senior Magistrate (see para. 21 below). There are also Justices of the Peace in the Islands who are appointed by the Governor primarily upon the recommendation of the Senior Magistrate and Chief Justice.

21. The Senior Magistrate is appointed by the Governor after consulting the Chief Justice. He is also, by virtue of his office, Coroner for the Islands and is responsible for the Coroner's Court. He is required by legislation to be an experienced lawyer who is entitled to practise as an advocate or as a solicitor in a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland and to have been so entitled for at least five years.

22. The Governor is responsible for the police and the Islands' prison. He is assisted in this by a Police Advisory Committee whose members include representatives of the community and which advises upon policy issues relating to the policing of the Islands. There is also a Board of Visiting Justices, comprising three Justices of the Peace, who are obliged, at least four times in each year, to visit and inspect the prison and receive complaints from prisoners. The Board must report its findings to the Governor.

23. The Constitution establishes an Advisory Committee on the Prerogative of Mercy. (This is the power, which is vested in the Governor on behalf of the Queen, to pardon a person convicted of a crime or to remit all or part of a sentence imposed by a court.) The Committee's membership includes two members of the Islands' Legislative Council. The Governor must consult the Committee in every case where the exercise of the Prerogative of Mercy is being considered.

24. The Attorney General and a Senior Crown Counsel are the Government's advisers on all legal issues which affect the Falkland Islands and they represent the Government in legal cases. Both are required to be lawyers of several years' experience. As the representative of the Crown (or the public interest), the Attorney General exercises various civil law functions and has the ultimate responsibility for enforcing the criminal law and, under the Constitution, he has the power to institute or discontinue all types of criminal proceedings. In the exercise of that power, he is not subject to the direction or control of any other person or authority. The Senior Crown Counsel deputizes for the Attorney General and administers the Government's legal aid scheme on his behalf.

25. Administration of all courts in the Islands is the responsibility of the Chief Justice, assisted by the Senior Magistrate. A Registrar General acts as Registrar or Clerk to the Courts and has responsibility for the registration of deeds affecting land, trade marks, companies, etc.

Criminal proceedings

26. Criminal proceedings are normally instituted by the police in accordance with guidelines established by the Attorney General. Under those guidelines, complex or difficult cases are referred to the Attorney General for consideration as to whether any proceedings should be brought. Additionally, where prosecutions have been started without reference to him, the Attorney General may review the decision taken by the police to commence proceedings and, in appropriate circumstances, may discontinue those proceedings or direct that other charges are brought. The police may issue cautions in certain cases instead of prosecuting. A private person may also institute criminal proceedings but this is subject to the power vested in the Attorney General to take over and review or discontinue such proceedings. Private prosecutions are in fact rare.

27. Criminal proceedings before the Summary Court and the Magistrate's Court are normally conducted by the Chief Police Officer or the Police Inspector. However, proceedings in the Supreme Court (and certain offences in the Summary Court and Magistrate's Court, most notably those committed under the law relating to fishing in the waters around the Islands) are conducted by the Senior Crown Counsel or the Attorney General in person.

28. There are, in effect, two categories of criminal offences: those triable only on indictment, i.e. by the Supreme Court, presided over by the Chief Justice (or an acting judge) sitting with a jury; and all other offences. The offences which are triable only on indictment are the more serious ones, such as murder, manslaughter and rape. Other offences are usually tried summarily

either by the Summary Court or by the Magistrate's Court. These are also the courts of committal to the Supreme Court when an accused person is charged with an offence which is triable only on indictment or when it is decided that he ought in any event to be so tried. In addition, the Summary Court and the Magistrate's Court have the power in certain circumstances to order that a person whom they have convicted summarily, but in respect of whom they consider that their sentencing powers are inadequate, should be committed to the Supreme Court for sentence.

29. All criminal courts in the Islands usually sit in open court to which the public and the media are admitted. There are special rules of practice and procedure relating to cases involving persons under 18 years of age. These cases may be heard before the Magistrate's Court or the Summary Court. However, sittings of these courts when dealing with cases of this type are arranged for different times from sittings involving adult defendants. Directions are usually issued to exclude members of the public from attending and media reports may not identify any person under 18 years of age who is appearing either as a defendant or a witness. Where a person under 18 years of age is charged jointly with someone of 18 years of age or over, the case is heard at an ordinary sitting of the relevant court but reporting restrictions may be imposed.

Criminal courts

30. There are three courts which sit in the Islands to deal with criminal matters:

(a) Summary Court

This court, which is established by an Ordinance, consists of one or more (in practice usually three) Justices of the Peace sitting to hear any matters which they are by law empowered to hear. Justices of the Peace are lay persons appointed as described in paragraph 20. There are usually about 21 lay justices in the Islands. The jurisdiction of the Summary Court is limited except where the court consists of two or more justices when it may exercise most of the jurisdiction of the Magistrate's Court which is described below.

(b) Magistrate's Court

The Magistrate's Court is also established by an Ordinance. It is held by the Senior Magistrate. The court has jurisdiction to deal with all offences except those which are triable only on indictment. The vast majority of criminal proceedings are dealt with before this court which has wide sentencing powers.

(c) Supreme Court

The Supreme Court is established by the Constitution. It has unlimited jurisdiction to hear and determine any criminal proceedings. The court consists of the Chief Justice or an acting judge (usually the Senior Magistrate). An acting judge is appointed by the Governor after consultation with the Chief Justice. As explained above, the court deals with the offences which are to be tried on indictment and with the sentencing of offenders

committed for sentence by the Summary Court or the Magistrate's Court. It also hears appeals from either the Summary Court or the Magistrate's Court.

Appeals in criminal cases

31. A person convicted by the Summary Court or the Magistrate's Court may appeal to the Supreme Court against his sentence if he pleaded guilty or against both his conviction and his sentence if he pleaded not guilty. The Chief Justice may also, in certain cases and of his own motion, call for and review the record of any proceedings in the Summary Court or the Magistrate's Court to satisfy himself as to the correctness of the proceedings and of any sentence passed. Appeals from the Supreme Court, against conviction or sentence, lie to the Court of Appeal for the Falkland Islands (see below). In certain cases a further appeal lies from the Court of Appeal to the Judicial Committee of the Privy Council.

32. Like the Supreme Court, the Court of Appeal for the Falkland Islands is established by the Constitution. It consists of a President and at least two Justices of Appeal, all of whom are appointed in the same manner as the Chief Justice and must be similarly qualified. The constitutional protection for the Chief Justice's security of tenure of office (see para. 19 above) applies to the members of the Court of Appeal also. The Chief Justice is also an ex officio member of the Court of Appeal except of course, when it is considering an appeal from one of his own decisions.

Trials

33. As in the United Kingdom and as is usual in Common Law systems, criminal trials are "adversarial" in nature. An accused person is presumed innocent until proved guilty and the prosecution must prove his guilt beyond reasonable doubt. The rights of accused persons to a fair trial, with all the necessary procedural and other safeguards, are guaranteed by section 13 of the Constitution which substantially corresponds to articles 14 and 15 of the International Covenant on Civil and Political Rights. Section 3 of the Constitution sets out the safeguards for persons in custody and specifically for those detained in connection with possible criminal proceedings. A machinery for enforcing these provisions is provided by section 16 of the Constitution (see para. 44 below.) In conformity with the foregoing, a defendant has the right to consult with and be represented by a legal adviser and he may be granted financial assistance, from a legal aid scheme run by the Government, to meet his costs. The prosecution usually informs the defence of the nature of any evidence which the prosecution is likely to adduce and also of witnesses whose evidence may be relevant but whom the prosecution does not propose to call. If, at the instance of either the defence or the prosecution, the court finds the defendant unfit to plead, by reason of his mental condition, he may be admitted to secure accommodation at the Islands Hospital.

34. Criminal trials normally follow the procedure adopted by criminal courts in England and Wales. As noted above, trials are normally in open court. The rules of evidence are rigorously applied and, if evidence is improperly admitted, a conviction may be quashed on appeal. During the trial, and as required by the Constitution, the defendant has the right to hear and

cross-examine witnesses for the prosecution, normally through a lawyer. The defence has the right to the last speech at the trial. The defendant cannot be questioned without consenting to be sworn as a witness in his own defence. When he does testify, cross-examination about his character or other conduct not relating to the offence charged may be made only in exceptional circumstances: generally the prosecution may not introduce such evidence.

Jury trials

35. The vast majority of cases in the Islands are dealt with summarily - i.e. without a jury. Offences which are tried on indictment in the Supreme Court are tried by a judge and jury. Where there is a jury, the judge decides questions of law, sums up the evidence for the jury and instructs it on the relevant law. It is then for the jury to decide whether the prosecution has proved beyond reasonable doubt that the defendant is guilty. If not, it must find him not guilty. In the Falkland Islands, verdicts of the jury must be unanimous. If the jury returns a verdict of "not guilty", the prosecution has no right of appeal and the defendant is acquitted by the judge and cannot be tried again for the same offence. In the event of a "guilty" verdict, the defendant is sentenced and has a right of appeal to the appropriate court.

36. A jury is completely independent of the judiciary and it is a criminal offence to interfere with a jury once it has been sworn.

37. Both the prosecution and the defence have the right to challenge up to six jurors in certain cases without giving any reason. Both the prosecution and the defence may challenge any other potential juror by giving reasons for believing that he is likely to be biased.

38. Persons between the ages of 21 and 60 years whose names appear on the electoral register for the Islands, with certain exceptions, are liable for jury service. They are chosen for such service at random. Certain persons (such as members of the judiciary, other members of the legal profession, priests and police officers) are exempt from jury service. Persons convicted of serious crime are disqualified from jury service.

Coroner's Court

39. The Senior Magistrate is the Coroner for the Islands by virtue of his office. In his absence, the Attorney General or a person acting as Attorney General may sit as a Coroner. It is the duty of the Coroner to investigate violent and unnatural deaths or sudden deaths where the cause is unknown. The deaths are normally reported to the Coroner by doctors or the police. If the death is sudden and the cause unknown, the Coroner need not hold an inquest if, after a post-mortem examination has been made, he is satisfied that the death was due to natural causes. Where there is reason to believe that the deceased died a violent or unnatural death or died in prison or in other specified circumstances, the Coroner must hold an inquest and it is the duty of the Coroner's Court to establish how, when and where the deceased died. A Coroner may sit alone or, in certain circumstances (e.g. where death occurs in police custody), with a jury.

Civil proceedings

40. The same three courts which exercise criminal jurisdiction in the first instance also have jurisdiction to deal with civil matters.

(a) Summary Court

The Summary Court, when consisting of two or more Justices of the Peace, has a limited civil jurisdiction but, in practice, most civil proceedings are commenced in the Magistrate's Court unless the law requires that they be commenced in the Supreme Court. The Summary Court has specific jurisdiction to deal with proceedings involving disputes between employers and employees.

(b) Magistrate's Court

The Magistrate's Court has jurisdiction to deal with a wide range of civil matters. Actions founded upon contract and tort, trust and mortgage cases, and actions for the recovery of land may all be dealt with in the Magistrate's Court. In most cases, claims must not exceed the statutory limit (currently £50,000). However, proceedings may be pursued in the Magistrate's Court even where the amount exceeds the statutory limit if the parties agree.

(c) Supreme Court

The Supreme Court has unlimited jurisdiction to hear and determine any civil proceedings. As well as dealing with those matters where the amount claimed is above the statutory limit, it exercises exclusive jurisdiction in admiralty matters and in cases relating to defamation, divorce, wardship and proceedings for judicial review.

41. All courts normally hear civil matters without the assistance of a jury. However, there are circumstances in which the court may, exceptionally, order a trial with a jury.

Appeals in Civil Cases

42. Appeals in civil cases from both the Summary Court and the Magistrate's Court lie to the Supreme Court. Appeals from the Supreme Court lie to the Court of Appeal for the Falkland Islands and from that court to the Judicial Committee of the Privy Council.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

A. Authorities having jurisdiction affecting human rights

43. Chapter I of the Constitution (sects. 1-17) provides the basic legal framework for ensuring the protection of the fundamental rights and freedoms of every person in the Falkland Islands. This chapter, in sections 1 to 15, contains legally enforceable provisions ensuring protection of the right to life, protection of the right of personal liberty, protection from slavery and

forced labour, protection from inhuman treatment, protection of freedom of movement, protection from deprivation of property, protection from arbitrary search or entry, protection of freedom of conscience, protection of freedom of expression including the freedom of the press, protection of freedom of assembly and association, and protection from discrimination on the grounds of race, sex, etc., and also ensuring the protection of the law (which covers the right to a fair trial, and all related safeguards, in both criminal and civil matters).

44. Section 16 of the Constitution confers on any person who alleges that any of the provisions of sections 1 to 15 has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, on any other person who also alleges such a contravention in relation to the detained person) the right to make direct application to the Supreme Court for redress. Under section 16 the Supreme Court has power to hear and determine any such application and to make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of the relevant provisions. Moreover, if a question as to the contravention of any of the provisions of sections 1 to 15 arises in any subordinate court, that court may (and must if any party so requests) refer it for determination to the Supreme Court and must then dispose of the case in accordance with that determination. An appeal lies as of right to the Court of Appeal (and thence, with the leave of the Court of Appeal, to the Judicial Committee of the Privy Council) from any decision of the Supreme Court under section 16.

45. In addition to the specific right of action given under section 16 of the Constitution, many infringements of the fundamental rights and freedoms protected by the Constitution will found alternative causes of action in the courts. Section 16 expressly does not prejudice these other remedies. For example, a person unlawfully deprived of his personal liberty may bring, or have brought on his behalf, civil proceedings to secure his release (by making application for a writ of habeas corpus). In addition, he may bring an action for damages for false imprisonment, wrongful arrest, or assault or for other violations of his civil rights, depending on the facts.

B. Remedies, compensation and rehabilitation

46. There is no provision in Falkland Islands law expressly conferring a right to compensation or rehabilitation on the victim of a human rights violation. However, as noted above, such a person, in addition to his ability in all cases to secure relief under section 16 of the Constitution, may have a number of remedies available to him under the ordinary law by virtue of which he could obtain damages for the infringement of his ordinary civil rights.

Legal aid

47. A legal aid scheme is available in the Islands whereby a person in need of legal advice or legal representation in court may have his legal costs paid out of public funds. Monies for the scheme are approved at the commencement of each financial year. The scheme is administered by the Government's Senior Crown Counsel on behalf of the Attorney General.

48. Eligibility for assistance under the scheme depends upon the level of the applicant's income and the value of his personal assets (excluding his principal private dwelling house). Once an applicant is eligible under the scheme, he is covered for legal expenses up to specified limits in connection with many legal issues including alleged denials or infringements of fundamental rights and freedoms. The specified limits may be extended by agreement with the Attorney General.

Compensation for wrongful convictions/detentions and for victims of crimes

49. There are no statutory schemes established in the Islands covering the payment of compensation to persons who have been wrongfully convicted or detained or to victims of crime. However, there would be civil remedies available in many such cases and the courts have statutory power to make compensation orders in appropriate criminal cases.

General

50. In the circumstances of the Falkland Islands, there are, in fact, very few recorded instances of serious violent crime. Persons who are accused of offences but have not been convicted are, subject to certain exceptions, automatically granted bail in accordance with section 81 of the Criminal Justice Ordinance 1989 and, in practice, it is extremely unusual for any unconvicted defendant in criminal proceedings to be held in custody. Practical considerations such as these have so far made it unknown for anybody to choose to commence proceedings based on breach of constitutionally protected rights and freedoms.

C. Constitutional protection of human rights: derogations, etc.

51. As explained in paragraph 43 above, chapter I of the Constitution of the Falkland Islands guarantees and protects the fundamental rights and freedoms of the individual. This chapter derives directly from the European Convention on Human Rights and ultimately from the Universal Declaration of Human Rights. The rights and freedoms specified in it are subject only to the limitations which are also specified and which are designed to ensure that the enjoyment of his rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest. Section 14 of the Constitution permits a law to authorize measures to be taken which derogate from certain specified provisions of chapter I during a period of public emergency but only to the extent that those measures are reasonably justifiable for dealing with the situation that then exists. Whether the measures actually taken are so justifiable is a question that can ultimately be determined by the courts.

D. Effect of human rights instruments in national law

52. Under the Common Law system which operates in the Falkland Islands, treaties which apply to the Islands (including human rights treaties) do not themselves have the force of internal law and cannot be directly invoked before the courts as a source of individual rights, though the courts will, when possible, construe domestic legislation in such a way as to avoid incompatibility with the United Kingdom's international legal obligations. The usual method of giving effect to treaty obligations (when these require

some change in existing law or practice) is to enact specific new legislation - this could be by an ordinance enacted locally or by an order in council made by the United Kingdom Government - or to amend existing legislation or to adapt existing administrative practices, as the case may require. Where this results in the creation or definition of specific legal rights and these are denied or interfered with (or there is a threat of such action), a remedy will be available in the courts through the ordinary procedures of civil litigation or, in some cases, by criminal sanctions.

IV. INFORMATION AND PUBLICITY

53. The texts of United Nations human rights instruments to which the United Kingdom Government is a party in respect of the Falkland Islands are available in the Islands and persons who request copies can obtain them through either Government House (the Governor's office) or the Attorney General's Chambers. At the current time, consideration is being given to the preparation and publication of a public information paper to raise public awareness of human rights instruments applicable to the Islands.

Annex VI

GIBRALTAR

I. LAND AND PEOPLE

1. Gibraltar is a narrow peninsula extending southward at the southernmost tip of Western Europe and overlooking the Straits of Gibraltar, the North African coast and Spain. A main feature of Gibraltar is the Rock which runs from north to south for a length of nearly three miles. It is three quarters of a mile wide and has a total area of 2¼ square miles. The highest point is 1,396 ft. above sea level. The total civilian population of Gibraltar is approximately 30,000, of whom just over 20,000 are native Gibraltarians. English is the official language but most Gibraltarians are fluent in English and Spanish.

2. Background statistical information, using the most up-to-date figures available, is as follows:

Per capita income	£10,620
Gross national product	£278 million
Rate of inflation	1.7 per cent (1993-1994)
External debt	Net public sector debt £23.8 million (1991-1992)
Rate of unemployment	14 per cent
Literacy rate	Not available - assumed to be nearly 100 per cent
Population	28,074 (Census of Gibraltar October 1991)
Percentage of population speaking English as mother tongue	90 per cent
Life expectancy	Males 73.4 (1991) Females 80.4 (1991)
Infant mortality rate	5.7 per 1,000
Maternal mortality rate	Not available
Fertility rate	Not available
Percentage of population under 15 and over 65 years of age	Males under 15 - 11.28 per cent Females under 15 - 10.1 per cent Males over 65 - 4.8 per cent Females over 65 - 8.0 per cent (1990)
Percentage of population in rural areas and in urban areas	Not applicable
Percentage of households headed by women	Not available

II. GENERAL POLITICAL STRUCTURE

A. System of government

3. Gibraltar is a British Dependent Territory.

4. The Gibraltar Constitution came into force in August 1969 and is contained in the Gibraltar Constitution Order 1969. A copy is provided as appendix 1.

5. Chapter I of the Constitution contains provisions which guarantee the protection of fundamental rights and freedoms of the individual. This chapter is discussed in more detail in Part III below.

6. The main features of the Constitution, apart from chapter I, are as follows:

(a) The Governor is appointed by the Queen on the advice of the United Kingdom Secretary of State for Foreign and Commonwealth Affairs, to whom he is accountable. There is also a Deputy Governor, similarly appointed. Executive authority is vested in the Governor but, except in certain specified cases, he is required, in exercising his functions, to consult either the Council of Ministers (in relation to "defined domestic matters") or the Gibraltar Council. ("Defined domestic matters" include such matters as trade and industry, education, economic development, and public works and services.) The Council of Ministers consists of the Chief Minister and not less than four nor more than eight other Ministers. Its meetings are summoned, and usually presided over, by the Chief Minister. The Chief Minister is the elected member of the House of Assembly who appears to the Governor to be most likely to command the support of the majority of the elected members, and the other Ministers are elected members, and the other Ministers are elected members of the Assembly whom the Governor appoints as Ministers after consultation with the Chief Minister. The Gibraltar Council consists of the Deputy Governor, the Deputy Fortress Commander, the Attorney General and the Financial and Development Secretary, together with the Chief Minister and four other Ministers designated by the Governor after consultation with the Chief Minister. As a rule, the Governor summons and presides over its meetings. With certain limited exceptions, the Governor must act in accordance with the advice of the Council of Ministers when he has consulted it on a defined domestic matter. In general, he is not required to act in accordance with the advice of the Gibraltar Council after consulting it but would usually do so (and must report to the Secretary of State if he does not). The Governor appoints, removes and exercises disciplinary control over public officers, but he is assisted in the exercise of these powers by the advice of a Public Service Commission established by the Constitution.

(b) The Legislature consists of the Governor and a House of Assembly. The House of Assembly consists of a Speaker (who is not an elected member but is appointed by the Governor after consultation with the Chief Minister and the Leader of the Opposition); the Attorney General and the Financial and Development Secretary, as ex officio members; and 15 elected members. The Speaker has no vote and the ex officio members may not vote on a motion of confidence or no-confidence. The Assembly has the power to make laws on any

subject. It does so in the form of bills which, when passed, are presented to the Governor for his assent. When he has assented to them, they become law as ordinances. In exercising this function of assenting (or not), the Governor must of course apply the provisions, described above, concerning the advice of the Council of Ministers or the Gibraltar Council. In practice, it is very rare for him to refuse to assent to a bill passed by the Assembly. He also has a limited reserve power to introduce legislation into the House of Assembly and have it enacted without the consent of the majority of the members of the House if it does not involve defined domestic matters, and he has an even more limited power to do so on defined domestic matters when he considers that the financial and economic stability of Gibraltar so requires. Formally, the Queen, on the advice of the Secretary of State, may disallow ordinances. The United Kingdom Government retains the power to legislate for Gibraltar by Act of Parliament or by Order in Council. The maximum life of each Assembly is four years but it may be dissolved earlier by the Governor acting after consultation with the Chief Minister. Sessions must be held at least every 12 months. The writs for a general election must be issued within 60 days of any dissolution of the Assembly, and the first session of the next Assembly must begin within 30 days of the polling day at that general election.

(c) Only persons who are registered voters may vote in elections to the Assembly. The qualifications and disqualifications of voters and the procedure at elections are prescribed in an ordinance. The qualifications and disqualifications of candidates for election are prescribed in the Constitution itself. In Gibraltar politics, it is usual for parties to put forward the candidates for election but there is nothing to prevent individual candidates from standing as independents. Currently, eight of the elected members form the Government party in the Assembly while the remaining seven elected members form the Opposition.

(d) The judicial and legal system is described in more detail below. Chapter V of the Constitution contains provisions regulating the Supreme Court, the Court of Appeal and appeals to the Judicial Committee of the Privy Council, and section 77 (in chap. VIII) defines the functions of the Attorney General in relation to the institution and conduct of criminal proceedings and protects his independence in carrying out those functions.

B. Europe

7. Under article 227 (4) of the Treaty Establishing the European Community, that Treaty applies to Gibraltar as a European territory for whose external relations the United Kingdom is responsible. Subject to certain exceptions set out in article 28 of the Act of Accession of 1972, Community law therefore applies to Gibraltar. Under Gibraltar's European Communities Ordinance 1972, European Community Regulations and directly effective Community obligations automatically have legal effect in Gibraltar while Community Directives fall to be implemented by local legislation.

C. Religion

8. Freedom of religion is expressly protected by section 9 of the Constitution.

D. History

9. The Greek philosopher, Plato, mentions the pillars of Hercules with reference to Calpe (Gibraltar) which dominates the Straits. The Romans called Gibraltar Mons Calpe but they did not establish a town there. It was not until 711 that Tarik Ibn Zeyad, a Berber who embarked upon the conquest of Spain, landed at the southern end of the Rock, and the town of Gibraltar eventually grew from then. The invasion of the Iberian Peninsula had begun and, gradually, practically the whole of Iberia was overrun. For over six centuries, with a short break from 1309 to 1333, Gibraltar remained under Moorish occupation. Fortifications were built during that period but no town existed until 1160.

10. Gibraltar was reconquered from the Moors by Spanish forces in 1462. Gibraltar remained a Spanish possession until the beginning of the eighteenth century. During the War of the Spanish Succession (1702-1713) the Rock of Gibraltar became a pawn in the struggle between the two rival claimants to the Spanish throne, Philip V and Charles III. Held by forces loyal to the former, Gibraltar fell in 1704 to a combined Anglo-Dutch force supporting the latter. By the Treaty of Utrecht, which ended the conflict and was signed in 1713, Gibraltar was yielded to the Crown of Great Britain "for ever". Spain subsequently laid siege to Gibraltar on a number of occasions, the most important ones being in 1727 and 1779.

11. During the course of the nineteenth century Gibraltar developed into a fortress of renowned impregnability - the phrase "as safe as the Rock" became commonplace in the English language. At the same time, a civilian community grew up within its walls, earning its living primarily from commercial activities. In 1830, responsibility for Gibraltar's affairs was transferred from the War Office to the Colonial Office. In that same year, a new Charter of Justice created a judiciary independent of the Governor's executive and legislative powers. Increasing civilian participation in local affairs came with the establishment of Sanitary Commissioners in 1865 and the creation of a City Council in 1921. At the turn of the century Gibraltar entered a new phase in its history: it became an important naval base, and a modern dockyard and harbour were developed.

12. Twice during the first half of the twentieth century the value of Gibraltar as a strategic naval base was proved. In both the 1914-1918 and 1939-1945 wars, Gibraltar was of key strategic value and a key point in the anti-submarine campaign. During the latter war the bulk of Gibraltar's civilian population was evacuated for security reasons; most went to Britain, Madeira and Jamaica. Gibraltar underwent dramatic changes over the war years. The airport was constructed then and so was a complex "underground" network of tunnels and chambers within the Rock.

13. After the war there was a growing demand by certain sections of the civilian population for greater self-government. The Association for Advancement of Civil Rights was formed during the war, and in 1945 the City Council was reconstituted, for the first time with an elected majority. The Governor's monopoly of legislative authority ended five years later with the institution of a new Constitution which provided for the formation of

a Legislative Council. The post-war years were also marked by considerable expansion in the social and economic spheres. Medical, education, housing and social security services were developed.

14. In 1963, the question of Gibraltar's status came for the first time before the United Nations Special Committee on Decolonization, and Spain revived her claim for the reversion of the Rock to Spanish sovereignty. As a result, constitutional discussions were held with Gibraltarian representatives and a new Constitution, which created the Gibraltar Council and the Council of Ministers, was introduced and came into force in July 1964. Elections followed in August 1964.

15. Throughout the 1960s, Spanish territorial claims were accompanied by increasing restrictions at the border between Spain and Gibraltar, culminating in 1969 in the complete closure of the frontier and the withdrawal of all other means of direct communication between the two countries.

16. Following a popular referendum in 1967 and further constitutional talks in 1968, Gibraltar was granted a new Constitution in 1969 by which the functions of the Legislative Council and the City Council were merged and a Gibraltar House of Assembly was established. The intention of the new Constitution was to provide self-government in domestic matters.

17. As explained in paragraph 7 above, the United Kingdom's accession to the European Community in 1972 entailed the application of Community law to Gibraltar with certain exceptions. These relate principally to the collection and harmonization of turnover tax, the customs union and the Common Agricultural and Fisheries Policies.

18. The Spanish border with Gibraltar was fully reopened in 1985, and in the latter part of the 1980s and early 1990s there has been an increase in tourism and investment and a considerable expansion in residential and commercial facilities including land reclamation projects.

E. The law

Administration

19. The courts structure consists of the Magistrates Court, the Court of First Instance, the Supreme Court, the Court of Appeal and the Judicial Committee of the Privy Council, and also a Coroner's Court. Their composition and jurisdiction are described in more detail below.

20. The Gibraltar judiciary are totally independent of the Government. They are not subject to direction or control from the Governor, the Gibraltar Council, the Council of Ministers, the House of Assembly or any Minister or official or any member of the Assembly. The tenure of office, and thus the independence, of the senior judges is expressly entrenched in the Constitution.

21. The Chief Justice has the responsibility for the administration of justice and of all courts in Gibraltar. He is appointed by the Governor on instructions from the Secretary of State and is removable, during his ordinary

term of office, only for proven misconduct or incapacity as established by a judicial tribunal. He must be a person who is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland or who has been qualified for at least 10 years to practise before such a court. The Governor may also appoint an additional judge of the Supreme Court if the need arises, for example, if the Chief Justice is absent or if pressure of work requires. He, too, is protected against removal during the term for which he was appointed. There are also a Stipendiary Magistrate and Justices of the Peace who are appointed by the Governor. The Stipendiary Magistrate is ex officio the Coroner. There is also a Registrar who acts as the clerk to the courts and has various administrative functions, for example, in relation to the registration of deeds affecting land. He is also the Admiralty Marshall.

22. The Governor is responsible for the police and the prison. He is assisted in this by a Police Complaints Board, whose members include representatives of the community and which investigates and advises in relation to aspects of policing, and by a Prison Board, which is obliged to meet at least eight times each year to receive complaints from prisoners and to visit and inspect the prison. The Board must report to the Governor any findings of concern.

23. The Attorney General, a Senior Crown Counsel and other Crown Counsel are the Government's advisers on most legal issues which affect Gibraltar and they represent the Crown in legal cases. The Attorney General has ultimate responsibility for enforcing the criminal law and, under the Constitution, has the power to institute or discontinue all types of criminal proceedings. In exercising that power, he is not subject to the direction or control of any other person or authority.

Criminal proceedings

24. It is normally the police who institute criminal proceedings. They do so in accordance with guidelines established by the Attorney General. Complex cases are referred to the Attorney General for consideration and advice as to whether any proceedings should be brought. Where prosecutions have been started without reference to the Attorney General, he may review the decision taken by the police to institute proceedings and may direct that alternative charges be brought or may discontinue those proceedings. The police may issue cautions in certain cases instead of prosecuting. Criminal proceedings before the Magistrates Court are normally conducted by a police inspector or chief police officer.

25. There are, in effect, two categories of criminal offences: those triable only on indictment, i.e. by the Supreme Court presided over by the Chief Justice (or an additional judge) sitting with a jury; and all other offences. The offences which are triable only on indictment are the more serious offences, such as murder, manslaughter, rape, robbery and drug trafficking. Other offences can be, and usually are, tried summarily by the Magistrates Court (though some of these are "triable either way", i.e. it can be decided, in certain circumstances, that they are to be tried on indictment). The Magistrates Court is also the court of committal to the Supreme Court when an accused person is charged with an offence which is triable only on indictment

or when it is decided that he ought in any event to be so tried. In addition, the Magistrates Court has the power in certain circumstances to order that a person whom it has convicted summarily, but in respect of whom it considers it sentencing powers to be inadequate, should be committed to the Supreme Court for sentence.

26. The criminal courts in Gibraltar usually sit in open court to which the public and the media are admitted. Special rules of practice and procedure apply to cases involving persons under 18 years of age. These cases are heard before the Juvenile Court, sitting at the Magistrates Court. Sittings of this Court are arranged so as to be held at different times from sittings involving adult defendants. Members of the public are usually excluded from attending and media reports may not identify any person under 18 years of age who is appearing as a defendant. Where a person under 18 years of age is charged jointly with someone of 18 years of age or over, the case is heard at an ordinary sitting of the relevant court but reporting restrictions may be imposed.

Criminal courts

27. There are two courts which sit in Gibraltar to deal with criminal matters:

1. Magistrates Court

The Magistrates Court, which is established by Ordinance, consists of, and is held before, either the Stipendiary Magistrate (i.e. a salaried, qualified lawyer) or lay Justices of the Peace (who are advised on points of law and procedure by a Magistrates' Clerk). It has jurisdiction to deal with all offences except those which are triable only on indictment. The vast majority of criminal proceedings are dealt before this court. When it is not held by the Stipendiary Magistrate the court consists of two or more (usually three) Justices sitting to hear any matter which by law they are empowered to hear.

2. Supreme Court

The Supreme Court is established by the Constitution. It has unlimited jurisdiction to hear and determine any criminal proceedings. The Court consists of the Chief Justice and any additional judge. The Court deals with serious indictable offences or offences "triable either way" which it has been decided ought to be tried on indictment; with the sentencing of offenders committed for sentence by the Magistrates Court; and with appeals from the Magistrates Court. Contested trials in this Court take place before a jury.

Appeals in criminal cases

28. A person convicted by the Magistrates Court may appeal to the Supreme Court against his sentence if he pleaded guilty or against both his conviction and sentence if he pleaded not guilty. Appeals from the Supreme Court, against conviction or sentence, lie to the Court of Appeal and in certain cases a further appeal lies to the Judicial Committee of the Privy Council.

29. Like the Supreme Court, the Court of Appeal is established by the Constitution. It consists of a President and two or more (at present three) Justices of Appeal; and the Chief Justice is also an ex officio member of the Court except when it is dealing with an appeal from one of his own decisions. The President and the Justices of Appeal are appointed in the same way as the Chief Justice and their security of tenure of office is also protected in the same way.

Trials

30. As is usual in Common Law systems, criminal trials are "adversarial" in nature. The innocence of an accused person is presumed until the prosecution have proved his guilt beyond reasonable doubt. The rights of accused persons to a fair trial, with all the necessary procedural and other safeguards, are guaranteed by section 8 of the Constitution which substantially corresponds to articles 14 and 15 of the International Covenant on Civil and Political Rights. Section 3 sets out the safeguards for persons in custody and specifically for those detained in connection with possible criminal proceedings. The enforcement machinery for these provisions is established by section 15 of the Constitution (see para. 38 below). In conformity with the foregoing, a defendant has the right to consult and be represented by a lawyer and, if he cannot himself afford to employ a lawyer, he may be granted legal assistance out of the Government's legal aid scheme. It is the usual practice for the prosecution to inform the defendant or his lawyer of the nature of any evidence which the prosecution is likely to adduce and also of witnesses whose evidence may be relevant but whom the prosecution does not propose to call. If, at the instance of either the defence or the prosecution, the court finds the defendant unfit to plead by reason of his mental condition, he may be admitted to secure accommodation at a Gibraltar mental institution.

31. The procedure for criminal trials follows the procedure adopted in England and Wales and continues to include committal proceedings. As mentioned above, trials are normally in open court. The rules of evidence are rigorously applied; and if evidence has been improperly admitted, a conviction may be quashed on appeal. At the trial, and as required by the Constitution, the defendant has the right to cross-examine witnesses for the prosecution, normally through a lawyer, and to call his own witnesses. If witnesses do not attend voluntarily, they may be legally compelled to attend. The defendant cannot be questioned without consenting to be sworn as a witness in his own defence. If he testifies, cross-examination about his character or other conduct not relating to the offence charged may be made only in exceptional circumstances.

Jury trials

32. As noted above, the vast majority of cases in Gibraltar are dealt with summarily without a jury. Offences which are tried in the Supreme Court on indictment are tried before a judge and jury. Where there is a jury, the judge decides questions of law, sums up the evidence for the jury and instructs it on the relevant law. The jury then determines whether the prosecution has proved beyond reasonable doubt that the defendant is guilty. If not, it must find him not guilty. A jury is normally comprised of 9 persons but 12 are required for a murder trial. Verdicts of the jury

must be unanimous in a murder trial, but a majority of 7 is sufficient in other trials. The jury is completely independent of the judiciary and it is a criminal offence to interfere with a jury once it has been sworn.

33. Both the prosecution and the defence may challenge any potential juror by giving reasons for believing that he is likely to be biased. Persons between the ages of 18 and 65 years whose names appear on the electoral register in Gibraltar are liable for jury service. Certain persons, such as members of the judiciary, other members of the legal profession, priests, police officers and women (unless they volunteer), are exempt from jury service. Persons with previous convictions for certain crimes are disqualified from jury service.

Coroner's Court

34. The Stipendiary Magistrate is the Coroner for Gibraltar by virtue of his office. The Coroner has the duty to investigate unnatural or violent deaths or deaths where the cause is unknown. Deaths are normally reported to the Coroner by doctors or the police. If a post-mortem examination has been made and the Coroner is satisfied that the death was due to natural causes, he need not hold an inquest. If, on the other hand, there is reason to believe that the deceased died a violent or unnatural death or died in a prison, the Coroner has a duty to establish how, when and where he died and must therefore hold an inquest.

Civil proceedings

35. There are two civil courts in Gibraltar, the Court of First Instance and the Supreme Court.

(a) Court of First Instance

The jurisdiction of the Court of First Instance embraces routine civil claims, for example, in contract or tort, where the debt, demand or damage claimed is not more than £1,000, whether on balance of amount or otherwise.

(b) Supreme Court

The Supreme Court has unlimited jurisdiction to hear and determine any civil proceedings. As well as dealing with cases otherwise within the jurisdiction of the Court of First Instance but where the amount claimed is above the £1,000 limit of that Court, the Supreme Court exercises jurisdiction in Admiralty matters and in cases relating to divorce, judicial review and defamation. Civil matters in the Supreme Court are normally heard without the assistance of a jury, though in exceptional circumstances a trial with a jury may be required.

Appeals in civil cases

36. Appeals in civil matters lie from the Court of First Instance to the Supreme Court and from the Supreme Court to the Court of Appeal. In certain cases an appeal may lie from the Court of Appeal to the Judicial Committee of the Privy Council.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

Authorities having jurisdiction affecting human rights

37. Chapter I of the Constitution (sects. 1-17) provides the basic legal framework for ensuring the protection of the fundamental rights and freedoms of every person in Gibraltar. This chapter (in sects. 1-14) contains legally enforceable provisions ensuring the protection of the right to life, protection of the right to personal liberty, protection from slavery and forced labour, protection from inhuman treatment, protection of freedom of movement, protection for privacy of the home and other property, protection from deprivation of property, protection of freedom of conscience, protection of freedom of expression, including the freedom of the press, protection of freedom of assembly and association, protection of freedom to establish schools, and protection from discrimination on the grounds of race, sex, religion, etc., and also ensuring the protection of the law (which covers the right to a fair trial, and all related safeguards, in both criminal and civil matters).

38. Section 15 of the Constitution confers on any person who alleges that any of the provisions of sections 1 to 14 has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, or any other person who alleges such a contravention in relation to the detained person) the right to make direct application to the Supreme Court for redress. The Supreme Court has power to hear and determine any such application and to make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of securing the enforcement of the relevant provisions.

39. In addition to the specific remedy provided by section 15 of the Constitution, a person whose fundamental rights and freedoms have been infringed may have alternative legal remedies available to him, and section 15 expressly does not prejudice their availability. For example, if a person has been deprived of his personal liberty, he may bring civil proceedings to secure his release by making an application for a writ of habeas corpus. He may also sue for damages for false imprisonment, wrongful arrest, assault or for other violations of his civil rights, depending on the facts of the case.

Compensation, rehabilitation, etc.

40. There is no provision in Gibraltar law expressly conferring a right to compensation or rehabilitation on the victim of a human rights violation. However, as noted above, such a person, in addition to his ability in all cases to secure relief under section 15 of the Constitution, may have a number of remedies available to him under the ordinary law through which he could obtain damages for the infringement of his ordinary civil rights. Moreover, the courts have a statutory power in criminal cases to order a convicted offender to pay compensation to the victim of his offence for personal injury, loss or damage resulting from that offence.

41. There is also no provision expressly conferring a right to compensation for having been held in custody in connection with criminal proceedings which eventually result in an acquittal. In practice that situation very rarely arises since, with some exceptions, accused persons are granted bail under the Criminal Procedure Ordinance.

Constitutional protection of human rights: derogations, etc.

42. As explained above, chapter I of the Constitution of Gibraltar guarantees and protects the fundamental rights and freedoms of the individual. This chapter derives directly from the European Convention on Human Rights and ultimately from the Universal Declaration of Human Rights. The rights and freedoms specified in it are subject only to the limitations which are also specified and which are designed to ensure that the enjoyment of his rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest. Section 16 of the Constitution permits certain laws to authorize measures to be taken which derogate from specified provisions of chapter I during a period of public emergency but only to the extent that those measures are reasonably justifiable for dealing with the situation that then exists. Whether the measures actually taken are so justifiable is a question that can ultimately be determined by the courts.

Effect of human rights instruments in national law

43. Under the Common Law system which operates in Gibraltar, treaties (including human rights treaties) which apply to Gibraltar do not themselves have the force of internal law and cannot be directly invoked before the courts as a source of individual rights, though the courts will, when possible, construe domestic legislation in such a way as to avoid incompatibility with the United Kingdom's international legal obligations. The usual method of giving effect to treaty obligations (when these require some change in existing law or practice) is to enact specific new legislation - this could be by an ordinance enacted locally or by an order in council made by the Queen in Council on the advice of the Secretary of State - or to amend existing legislation or to adapt existing administrative practices, as the case may require. Where this results in the creation or definition of specific legal rights and these are denied or interfered with (or there is a threat of such action), a remedy will be available in the courts through the ordinary procedures of civil litigation or, in some cases, by criminal sanctions. Where, by virtue of Gibraltar's status in relation to the European Community (see para. 7 above), a relevant right derives from a provision of Community law which has direct effect, it would, exceptionally, be enforceable in the Gibraltar courts without the interposition of further legislation.

Machinery for overseeing and protecting human rights

44. There are no institutions or machinery, other than the courts, charged with the specific responsibility of overseeing the implementation of human rights. However, it is well understood in Gibraltar that, if complaints of human rights violations (or of any other form of abuse of power or maladministration) are raised either by the exercise of the relevant statutory right of appeal or by way of general complaint to the executive government and

they appear to have substance, they will be investigated thoroughly. In addition, there are a number of private legal practitioners in Gibraltar through whom such a complaint could be pursued. In appropriate cases the legal machinery of the European Union or of the European Commission of Human Rights and the European Court of Human Rights could be invoked to secure the implementation of rights deriving from European law or from the European Convention on Human Rights.

IV. INFORMATION AND PUBLICITY

45. The texts of United Nations human rights instruments to which the United Kingdom Government is a party in respect of Gibraltar are available in Gibraltar and persons who request copies can obtain them through the Government Secretariat, or the Office of the Deputy Governor or the Attorney General's Chambers.

Annex VII

HONG KONG

I. LAND AND PEOPLE

1. Background statistical information, using the most up-to-date figures available, is as follows:

(a) Population by sex, end 1994

Male	3.1 million
Female	3.0 million
Total	6.1 million

(b) Percentage of population estimate by age group, mid-1994

Age	Sex	Percentage of total population
Under 15	Male	10.1
	Female	9.3
15-64	Male	36.6
	Female	34.6
65 and over	Male	4.2
	Female	5.2
All age groups	Male	50.9
	Female	49.1

(c) Population in rural/urban area: not available

(d) Education attainment (in per cent of population aged 15 and over), 1991 Population Census

Educational attainment	Sex	Percentage
No schooling/kindergarten	Male	3.6
	Female	9.1
Primary	Male	13.2
	Female	12.0
Secondary and above	Male	33.8
	Female	28.2
Overall	Male	50.6
	Female	49.4

(e) Literacy rate (1984): 88.4 per cent

(f) Percentage of population (excluding mutes) aged five and over by usual language/dialect, 1991 Population Census

Usual language/dialect	Percentage
Cantonese	88.7
Putonghua	1.1
Other Chinese dialects	7.1
English	2.2
Others	1.0
	100.0

(g) Crude birth and death rates, mid-1994 (provisional)

Crude birth rate (per 1,000 population)	12.0
Crude death rate (per 1,000 population)	5.2

(h) Life expectancy, mid-1994 (provisional)

Sex	No. of years
Male	75.4
Female	81.0

(i) Infant mortality, 1993

Sex	Rate per 1,000 live births
Male	4.9
Female	4.6

(j) Maternity mortality (per 1,000 total births)

Year	Rate
1993	0.03

(k) Fertility rate, 1993

General fertility rate (per 1,000 women aged 15-49)	42.0

(l) Percentage of household heads by sex, 1991 Population Census

Sex	Percentage distribution
Male	74.3
Female	25.7

(m) Unemployment rate (not seasonally adjusted)

Year	Unemployment rate (%)
1994	1.9

(n) Rate of inflation

(i) Consumer Price Index (A)

Year	Annual rate of increase in CPI (A) (%)
1990	9.8
1991	12.0
1992	9.4
1993	8.5
1994	8.1

Note: The CPI (A) is based on the expenditure pattern of about 50 per cent of households in Hong Kong which had an average monthly expenditure of HK$ 2,500-HK$ 9,999 a month during the base period of October 1989-September 1990 or an approximate monthly expenditure range of HK$ 3,600-HK$ 14,600 at 1994 prices.

(ii) Implicit price deflators of GDP

Deflator year	(1990 = 100)	Annual rate of change (%)
1990	100.0	7.5
1991	109.2	9.2
1992	119.8	9.7
1993*	130.4	8.8
1994*	140.4	7.7

* Revised (May 1995) estimates.

(o) Gross domestic product for 1990-1994

Year	At current market prices (US$ Mn)	At constant (90) market prices (US$ Mn)
1990	74 791	74 791
1991	86 027	78 756
1992	100 676	84 013
1993*	116 048	88 993
1994*	131 856	93 942

* Revised (May 1995) estimates.

(p) Per capita income

Per capita GDP for 1990-1994

Year	At current market prices (US$)	At constant (90) market prices (US$)
1990	13 111	13 111
1991	14 949	13 685
1992	17 324	14 456
1993*	19 606	15 035
1994*	21 753	15 498

* Revised (May 1995) estimates.

(q) External debt: The Hong Kong Government does not incur external debts.

II. GENERAL POLITICAL STRUCTURE

Constitution

2. The Letters Patent and the Royal Instructions are the written constitution of Hong Kong. The Letters Patent establish the basic framework of the administration of Hong Kong while the Royal Instructions passed under the Royal Sign Manual and Signet, lay down procedures that must be followed.

3. The Letters Patent create the office of Governor and Commander-in-Chief of Hong Kong and require him to observe laws and the instructions given to him by the Queen or the Secretary of State. They also deal with the constitution of the Executive and Legislative Councils, the Governor's powers in respect of legislation, disposal of land, the appointment of judges and public officers, pardons, and the tenure of office of Supreme Court and District Court judges.

4. The Royal Instructions deal with the appointment of members of the Executive and Legislative Councils, the nature of proceedings in the Executive Council, the Governor's responsibility to consult the Executive Council on important policy matters, and his right to act against its advice. They also deal with the membership of, and election to, the Legislative Council, the nature of proceedings there, and the nature of legislation which may not be passed.

System of government

5. The Governor is the representative of the Queen in Hong Kong. He has the ultimate direction of the administration of Hong Kong and is also the titular Commander-in-Chief. There is an Executive Council which offers advice to the Governor on important matters of policy.

6. Hong Kong operates a three-tier system of representative government. At the central level, the Legislative Council enacts laws, debates policy issues and controls public expenditure. At the regional level, the two municipal

councils, the Urban Council and the Regional Council, provide public health, cultural and recreational services in their respective regions. At the district level, the 18 District Boards offer advice on the implementation of policies in their districts and provide an effective forum for public consultation.

7. Under the terms of the Joint Declaration of the United Kingdom and Chinese Governments on the Question of Hong Kong which entered into force on 27 May 1985, Hong Kong will become, with effect from 1 July 1997, a Special Administrative Region of the People's Republic of China.

8. The Special Administrative Region will be headed by the Chief Executive of the Region. He or she will be selected by election or through consultations held locally and be appointed by the Central People's Government. The method of selection of the Chief Executive is provided in the Basic Law. It provides that the Chief Executive shall be elected by an Election Committee which will be composed of 800 members from four sectors:

Industrial, commercial and financial sectors	200
The professions	200
Labour, social services, religious and other sectors	200
Members of the Legislative Council, representatives of district-based organizations, Hong Kong deputies to the National People's Congress, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference.	200

Executive Council

9. The Executive Council is made up of three ex officio members - the Chief Secretary, the Financial Secretary and the Attorney General - together with an unspecified number of other members appointed by the Governor on the authority of the Secretary of State for Foreign and Commonwealth Affairs in London. At present, there are 10 appointed members of whom 1 is an official member.

10. The Council normally meets once a week. The Governor presides over its meetings. He is in general required by the Royal Instructions to consult the Council on important matters of policy. The Executive Council has the power to make subsidiary legislation under a number of ordinances. Members tender their advice individually, but the Council's conclusions are presented as collective decisions.

Legislative Council

11. The Legislative Council consists of three ex officio members and 57 non-official members. Of these 57 non-official members, 18 are appointed by the Governor, 21 are returned by functional constituency elections and 18 by geographical constituency elections. A president is elected from amongst

their number by the members of the Legislative Council excluding the ex officio members. As from the Legislative Council election on 17 September 1995, all members of the Council will be elected. Thirty of them will be returned by functional constituency election, 20 by geographical constituency election and 10 by Election Committee election.

12. The prime constitutional function of the Legislative Council is to legislate. It legislates by passing bills which are then presented to the Governor for his assent. If he assents, they become law as ordinances. Formally, the Queen, on the advice of the Secretary of State, may disallow any ordinances but this power of disallowance has not been used for many years. The Government of the United Kingdom retains the power to legislate for Hong Kong by Order in Council and Act of Parliament. The second major constitutional function of the Legislative Council is to control public expenditure. The Finance Committee, a standing committee of the Council, scrutinizes public expenditure, examines the draft Estimates of Government Expenditure, considers requests which entail changes to the provisions agreed by the Council in the Estimates each year, and notes the financial implications of new policies. The third constitutional role of the Council is to monitor the performance of the administration. This is undertaken mainly through the Public Accounts Committee, or during question time and debates at the regular sittings of the Council.

Municipal Councils

13. At the regional level, the Urban Council and Regional Council are responsible for providing municipal services to the population in urban areas and the New Territories respectively. These services cover the maintenance of environmental hygiene, protection of public health, provision of sports and recreational facilities and also cultural and entertainment activities. Both Councils are statutory bodies and are financially autonomous.

14. On 1 April 1995, all appointed seats in the Urban and Regional Councils were abolished. The Urban Council consists of 41 councillors: 32 elected from geographical constituencies; and 9 representative members from the urban District Boards. The Regional Council comprises 39 members: 27 elected from geographical constituencies; 1 representative from each of the 9 New Territories District Boards, and the Chairman and the 2 Vice-Chairmen of the Heung Yee Kuk, who are ex officio members. (The Heung Yee Kuk is a statutory body which represents the indigenous population of the New Territories.)

District Boards

15. District Boards are statutory bodies established to provide a forum for public consultation and participation at the district level. With effect from 1 October 1994 there are now 18 District Boards throughout the territory of which 9 are in the urban region and the remaining 9 are in the New Territories. They consist of 346 elected members from constituencies and 27 rural committee chairmen in the New Territories who are ex officio members. The Boards have a mainly advisory role with substantial responsibility for the management of district affairs. In monitoring the Government's performance, the District Boards discuss a wide range of matters affecting the well-being

of residents in the districts. District Boards have also been allocated public funds for local recreational and cultural activities and for minor environmental improvement work.

The structure of the Administration

16. The Chief Secretary is principally responsible to the Governor for the formulation of government policies and their implementation. The Chief Secretary is the head of the Public Service. The Chief Secretary, the Financial Secretary and the Attorney General are the Governor's principal advisers.

17. The Chief Secretary exercises direction over the Administration primarily as head of the Government secretariat, the central organization comprising the Secretaries of the policy branches and resource branches and their staff. The Chief Secretary deputizes for the Governor during his absence and is the Senior Official Member of the Executive and Legislative Councils.

18. The Administration of the Hong Kong Government is organized into branches and departments. The branches, each headed by a Secretary, collectively form the Government secretariat. There are currently 13 policy branches, and two resource branches concerned with finance and the Public Service.

19. With certain exceptions, the heads of government departments are responsible to the branch Secretaries for the direction of their departments and the efficient implementation of approved government policy. The exceptions are the Audit Department, the Director of which reports directly to the President of the Legislative Council; the Independent Commission Against Corruption, the Commissioner of which reports directly to the Governor; the Judiciary, which is the responsibility of the Chief Justice; and the Legal Department, which is the responsibility of the Attorney General.

Joint Declaration

20. The Sino-British Joint Declaration on the Question of Hong Kong was signed by the United Kingdom and the Chinese Governments on 19 December 1984. In the Joint Declaration, the United Kingdom Government declares that it will restore Hong Kong to the People's Republic of China with effect from 1 July 1997, and the Chinese Government declares its basic policies on Hong Kong, under the guiding principle of "one country, two systems", after resuming the exercise of sovereignty over it. The two Governments agree to implement this Declaration and its three annexes. Annex I contains the basic policies elaborated by the Chinese Government on Hong Kong in 14 sections; annex II sets out the terms of reference and the working arrangements of a Joint Liaison Group which will operate up to the year 2000; and annex III provides for the protection of land rights and for future land leases in Hong Kong and establishes a joint Land Commission.

21. The Declaration and its three annexes make up an international agreement, legally binding in all its parts, which has been registered as such with the United Nations Secretariat under Article 102 of the Charter. The Joint Declaration deals in detail with Chinese policies towards Hong Kong after 1997. It provides a framework within which the people of Hong Kong can

work for a secure and prosperous future. On 4 April 1990, the National People's Congress of the People's Republic promulgated the Basic Law of the future Hong Kong Special Administration Region. The Basic Law is a Chinese law that gives effect to China's obligations under the Joint Declaration. It will enter into force on 1 July 1997.

The judicial system in Hong Kong

22. The Common Law of England and the rules of equity are in force in Hong Kong in so far as they are applicable to the circumstances of Hong Kong or its inhabitants, subject to such modifications as local circumstances may require.

23. The judiciary of Hong Kong is responsible for the administration of justice, operating on the principle, fundamental to the Common Law system, of independence from the executive and legislative branches of the Government. The courts adjudicate on cases in accordance with the laws of the territory.

24. The courts system in Hong Kong follows broadly that in the United Kingdom. The courts of justice comprise the Supreme Court (which includes the Court of Appeal and the High Court), the District Court (including a Family Court), the Magistracies (including a Juvenile Court), the Coroners' Court and also the Lands Tribunal, the Labour Tribunal, the Small Claims Tribunal and the Obscene Articles Tribunal. There is at present also an appeal in certain cases from the Supreme Court to the Judicial Committee of the Privy Council.

25. The present judicial system will continue after 1997. The Joint Declaration and the Basic Law provide that, after the establishment of the Hong Kong Special Administrative Region, the judicial system previously practised in Hong Kong shall be maintained except for those changes consequent upon the establishment of the Court of Final Appeal.

26. The Basic Law further provides that in criminal and civil proceedings in the Hong Kong Special Administrative Region, the principles previously applied in Hong Kong and the rights previously enjoyed by parties to proceedings shall be maintained. Anyone who is lawfully arrested shall have the right to a fair trial by the judicial organs without delay and shall be presumed innocent until convicted by the judicial organs.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

General principles

27. Effective protection for the individual, including his human rights, is provided by the application of the "rule of law". There are two meanings and applications of the "rule of law":

(a) The supremacy of the law

The law is derived from the legislature or decisions of the courts. The courts must be independent of the Government. So no individual is punishable or can be lawfully made to suffer personally or financially

except for a breach of law established before the independent courts. If the police wish to detain an individual or if taxes are to be levied, the officials concerned must be able to provide legal authority for their actions and, if necessary, justify them before the courts. Where, under the law, an official or an authority has a discretion to make a decision, that discretion must be exercised legally, fairly and reasonably. Where it does not do so, the decision must be capable of successful challenge before the courts.

(b) Equality before the law

No government authority or official, and no individual, is above the law. All persons, regardless of race, rank, politics, religion or sex, are equal before the law and subject to the same law. Individuals and the Government have the same access to the courts to enforce legal rights or defend an action.

Effect of human rights instruments in national law

28. In general, and as is usual in Common Law systems, treaties which apply to Hong Kong (including human rights treaties) do not themselves have the force of law and cannot be directly invoked before the courts as the source of individual rights, though the courts will, when possible, construe domestic legislation in such a way as to avoid incompatibility with the United Kingdom's international legal obligations. The usual method of giving effect to treaty obligations (when these require some change in existing laws or practice) is to enact specific new legislation - this could be an ordinance enacted locally, such as the Crimes (Torture) Ordinance, which was enacted in 1993 to give effect in Hong Kong to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; alternatively, it could be an order in council made by the United Kingdom Government - either to amend existing legislation or to adapt existing administrative practices, as the case may require. Where this results in the creation or definition of specific legal rights and these are denied or interfered with (or there is the threat of such action), a remedy will be available in the courts through the ordinary procedures of civil litigation, or the law may provide criminal sanctions.

Bill of Rights Ordinance

29. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were extended to Hong Kong in 1976. The Joint Declaration guarantees that the provisions of the two Covenants as applied to Hong Kong shall remain in force after 1997. Until recently, the provisions of the ICCPR, like those of the ICESCR, were implemented in Hong Kong as described above, that is to say, through a combination of Common Law, particular legislation and administrative measures. However, in view of the strong support in the community for the embodiment of basic civil and political rights in a justiciable bill of rights, the Hong Kong Bill of Rights Ordinance (BORO) was enacted in June 1991 specifically to give effect in local law to the provisions of the ICCPR as applied to Hong Kong. It achieves this by setting out a detailed bill of rights whose terms substantially correspond to those of the ICCPR and by

providing that all existing and future laws must, if possible, be construed so as to conform to it and that it overrides any existing law that cannot be so construed. To complement and complete these provisions, the Letters Patent (see paras. 2 and 3 above) were amended so as to ensure that no law can in fact be made in Hong Kong in the future that restricts the rights and freedoms enjoyed in Hong Kong in a manner which is inconsistent with the ICCPR as applied to Hong Kong. The amendment came into operation at the same time as the BORO. Copies of the BORO and the Amending Letters Patent are provided as appendices 1 and 2. The relevant provision of the principal Letters Patent, article VII (3), has since been renumbered as article VII (5).

30. The Letters Patent will cease to apply on 30 June 1997. However, the ICCPR (the Covenant) as applied to Hong Kong will continue in force. This is provided for in the Sino-British Joint Declaration and in article 39 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China. Article 39 also provides that the Covenant as applied to Hong Kong shall be implemented through the laws of the Hong Kong Special Administrative Region. Since the BORO incorporates the provisions of the Covenant as applied to Hong Kong into local law, it is considered to be fully consistent with the Basic Law and in particular with article 39.

31. The BORO further provides that no proceedings shall be held to be outside the jurisdiction of any court or tribunal on the ground that they relate to the Bill of Rights. Any court or tribunal may, in any proceedings within its jurisdiction in which a violation or threatened violation of the Bill of Rights is raised or to which it is relevant, grant such remedy or relief or make such order in respect of that violation or threatened violation as it has power to make in those proceedings and as it considers appropriate and just in the circumstances. A person may take action for breach of the BORO or allege such a breach in other proceedings, whether civil or criminal. A person may also challenge a law made after the enactment of the BORO on the basis that it is inconsistent with article VII (5) of the Letters Patent. The BORO binds the Government and all public bodies.

32. The BORO contains a provision, exactly corresponding to article 4 of the Covenant, which permits derogation from certain of the provisions of the Bill of Rights in time of public emergency.

33. The impact of the BORO since its implementation is discussed in the report on Hong Kong submitted to the Human Rights Committee (CCPR/C/95/Add.5, paras. 2-8).

Complaints and investigations

34. The Complaints Against Police Office investigates all complaints from the public concerning the conduct and behaviour of members of the police force. The investigation of all these complaints is monitored by the Police Complaints Committee, which is an independent body appointed by the Governor. The Chairman and two Vice-Chairmen of the Committee are either Executive Councillors or Legislative Councillors. Committee members include eight Justices of the Peace, the Attorney General or his representative, and the Commissioner for Administrative Complaints or his representative (see paras. 36 and 37 below).

35. Complaints against officers of the Independent Commission Against Corruption can be made to the Independent Commission Against Corruption Complaints Committee. It comprises eight members, among whom are five members of the Executive and Legislative Councils, the Attorney General and the Commissioner for Administrative Complaints.

Complaints against maladministration

36. The Commissioner for Administrative Complaints Ordinance (Cap. 397) was enacted in 1988 to empower the Commissioner for Administrative Complaints (COMAC) to investigate and report on grievances of members of the public as a result of administrative actions. A comprehensive review of the COMAC system was carried out in 1992 and the Ordinance was accordingly amended in June 1994.

37. The legislative amendments have improved the COMAC system in line with public expectations. Access - formerly by a referral system - is now direct, enabling the public to take their grievances direct to the Commissioner. COMAC is now empowered to initiate investigation of his own volition if he believes that any person may have sustained injustice. His jurisdiction now extends to six major public bodies whose activities have a direct and significant impact on the daily life of the public and the intention is gradually to extend that jurisdiction to other major statutory bodies. After his investigation of a complaint, the Commissioner is required by law to report his opinion and his reasons, together with a statement of any remedy and recommendation that is considered necessary, to the head of department affected. If the Commissioner believes that a serious irregularity or injustice has taken place, he may make a report, stating his opinion and his reasons, to the Governor; such a report is bound by law to be laid before the Legislative Council.

38. Developments in respect of the complaints system are discussed in the report on Hong Kong submitted to the Human Rights Committee (CCPR/C/95/Add.5, paras. 18-19).

Complaints against disciplined services other than the police

39. Other disciplined services departments maintain clear guidelines and procedures for handling complaints. For example, the Correctional Services Department, which runs Hong Kong's prisons, has set up a dedicated committee for this purpose. The procedures so established are considered appropriate in view of the number and nature of complaints handled.

40. The Immigration Department applies complaints procedures set out in the Immigration Service Standing Orders made by the Director of Immigration under the authority of the Immigration Service Ordinance. Complaints about abuse of authority or maltreatment by service members can be made to the Director of Immigration and are investigated promptly in accordance with the procedures in the Standing Orders. To ensure that all complaints are properly handled, a Complaints Review Working Party examines the results of investigations, conducts reviews and recommends follow-up action. Any person aggrieved by improper treatment or mismanagement of his case may also lodge a complaint to the Commissioner for Administrative Complaints. If there is evidence of a

criminal offence committed by a member of the Immigration Service, the case is immediately reported to the police for further investigation. Disciplinary procedures against Immigration Service staff are also governed by the Immigration Service Ordinance and the Immigration Service Standing Orders. Under section 8 of the Immigration Service Ordinance, unlawful or unnecessary exercise of authority resulting in loss or injury to any person is a disciplinary offence.

Legal aid

41. There is a comprehensive system of legal aid, advice and assistance which is provided by two organizations: the Legal Aid Department of the Hong Kong Government and the Duty Lawyer Service.

42. The Legal Aid Department provides assistance in legal representation to persons in both civil and criminal cases heard in the District Court, the High Court and the Court of Appeal in Hong Kong and also the Judicial Committee of the Privy Council in England. Applicants must satisfy the Director of Legal Aid of their financial eligibility (the means test) and of the justification for legal action (the merits test). In criminal cases the Director of Legal Aid has a discretion to grant legal aid to an applicant who fails the means test if it is in the interests of justice to do so. Moreover, in capital cases (including murder), the grant of legal aid to a person for his defence or appeal is mandatory so long as he can pass the means test. This is to ensure that all relevant matters are placed before the court by the legal representative of the defendant/appellant.

43. To complement the legal aid services provided by the Legal Aid Department, the Duty Lawyer Service operates three schemes to provide legal representation (Duty Lawyer Scheme), legal advice (Legal Advice Scheme) and legal information (Tel Law Scheme). The Service is jointly managed and administered by the Law Society and the Bar Association of Hong Kong, but is fully funded by the Government. The Duty Lawyer Scheme offers legal representation to virtually all defendants (juvenile and adult) charged in the Magistracies who cannot afford private representation. Applicants are subject to a simple means test and a merits test, based on the "interest of justice" principle in accordance with the BORO. The Legal Advice Scheme and the Tel Law Scheme respectively provide members of the public with free legal advice through individual appointments and taped information on legal aspects of everyday problems.

44. An interdepartmental working group commenced a comprehensive review of the law, policy and practice governing the provision of legal aid services in March 1992. It published its report in July 1994, after taking fully into account the responses made to the proposals set out in a public consultation paper issued in April 1993. The Government accepts the working group's 25 recommendations which are aimed at improving various aspects of the legal aid system. Some of the recommendations meet the public demand for greater access to legal aid. These include an expansion of the scope of the Supplementary Legal Aid Scheme for the "sandwich" class and an extension to meritorious civil Bill of Rights cases of the Director of Legal Aid's present discretionary power to waive the financial eligibility limit in criminal cases.

45. In response to increasing concerns over the status of the Legal Aid Department as a government department, the working group recommended the setting up of an independent statutory legal aid services council to oversee the operation of the Legal Aid Department and the Duty Lawyer Service and to advise the Hong Kong Government on legal aid policy and funding requirements. Accordingly, in February 1995, the Hong Kong Government introduced a bill for the council's establishment. Assuming the bill's passage into law, the new council will explore the feasibility and desirability of other options of enhancing the independence of legal aid administration, including the establishment of a non-government authority for the day-to-day administration of legal aid services.

46. Legislation giving effect to the working group's other recommendations was enacted in June 1995. The various recommendations will start taking effect from August.

Responsibility for overseeing implementation of human rights

47. The Home Affairs Branch of the Hong Kong Government secretariat is responsible for overseeing the implementation of human rights in Hong Kong.

IV. INFORMATION AND PUBLICITY

The Human Rights Education Sub-Committee

48. The Committee on the Promotion of Civic Education (the Committee) was set up in May 1986 to promote civic awareness. In May 1992, following the BORO's enactment in 1991, the Committee established a Human Rights Education Sub-Committee to promote public understanding of the BORO and respect for human rights. In the past three years, human rights has been the major emphasis of the Committee's work and human rights concepts have been promoted through several channels. Teaching materials, including teaching kits, comic books and videos for secondary students have been produced. Territory-wide projects have been organized, including the annual Civic Education Day and annual Civic Education Exhibition, seminars, workshops, competitions, teleline service, television and radio programmes. Sponsorship totalling $2.5 million has been given to 64 human rights education projects organized by voluntary agencies/community bodies under the Community Participation Scheme. Human rights education materials, including United Nations publications, are available to the public at the Civic Education Resource Centre (see para. 49 below). A detailed account of the Committee and the programmes undertaken in relation to human rights is provided in appendix 3. Recent developments - and human rights education for schools, the civil service and the judiciary - are discussed in the report on Hong Kong submitted to the Human Rights Committee (CCPR/C/95/Add.5, paras. 12-17).

The Civic Education Resource Centre

49. This Centre was established by the Committee on the Promotion of Civic Education. Its purpose is to facilitate the work of civic education bodies and voluntary agencies in promoting civic and human rights education. It has a collection of human rights publications, including United Nations

publications, human rights teaching kits, display material, and audio and video tapes on human rights. It is open to the general public free of charge during office hours.

Government publications

50. The Hong Kong Government has published various human rights documents and introductory booklets in both English and Chinese. These include:

(a) The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights;

(b) The BORO;

(c) An introductory booklet on the Bill of Rights;

(d) The International Convention on the Elimination of All Forms of Racial Discrimination.

51. The United Kingdom Government is responsible for preparing reports in respect of Hong Kong under various human rights treaties. Draft reports are prepared by the Hong Kong Government, drawing on its own information as well as information from outside sources. Starting with the present report, the Hong Kong Government has resolved to consult the Legislative Council and non-governmental organizations on the state of the implementation of these treaties in Hong Kong, and their views will continue to be taken into consideration in the preparation of the draft reports. Human rights reports in respect of Hong Kong are tabled before the Legislative Council and made public after they have been submitted to the United Nations by the United Kingdom Government. Copies are deposited in public libraries for public inspection.

Annex VIII

MONTSERRAT

I. LAND AND PEOPLE

1. Background statistical information, using the most up-to-date figures available, is as follows:

Per capita income	EC$ 12,704 (1991)
GDP	EC$ 135.16 million (1991)
Rate of inflation	2.2 per cent (year end 1992)
External debt	EC$ 31 million (1992)
Rate of unemployment	10 per cent (1992)
Literacy rate	90 per cent (1992)
Percentage of population speaking English as mother tongue	Not available - assumed to be approximately 100 per cent
Life expectancy	The life expectancy of Montserratians is relatively high. Over 70 per cent of deaths occur in the 65+ age group with a great number of women living to a "ripe" old age (i.e. 90+)
Infant mortality rate	6.6 per 1,000 (1994)
Maternal mortality rate	Nil (1994 and 1995)
Fertility rate	1.8 (1992)
Population	Between 10,000 and 12,000 depending on the time of year
Percentage of population under 15 and over 65 years of age	Males under 15 years of age 27.2 per cent and females 25.3 per cent. Males over 65 years of age 11.4 per cent and females 15.6 per cent (1991 census)
Percentage of population in rural areas and urban areas	Rural 90.7 per cent and urban 9.3 per cent (1991 census)
Percentage of households headed by women	39.5 per cent (1991 census)

Religion	The most common religion is Christian. Anglicans make up 26.8 per cent of the population, Methodists 19.56 per cent, Pentecostals 14.85 per cent, Roman Catholics 13.13 per cent and Seventh Day Adventists 11.84 per cent. The remaining 14.34 per cent is divided among eight other denominations (1991 census)

II. GENERAL POLITICAL STRUCTURE

A. System of government

2. Montserrat is a British Dependent Territory.

3. The present Constitution is contained in Schedule 2 to the Montserrat Constitution Order 1989, a copy of which is provided as appendix 1. Part IV of the Constitution (which is discussed in more detail below) contains provisions which guarantee the fundamental rights and freedoms of the individual.

4. The main features of the Constitution, apart from Part IV, are as follows. It provides for a "Westminster style" form of Parliamentary government, with a Governor (representing the Crown), an Executive Council (corresponding to the Cabinet) and a largely elected legislature, the Legislative Council, from which the Executive Council is drawn and to which it is accountable (and by which it may, in effect, be dismissed).

The Executive

5. The Governor, in whom executive authority is formally vested, is appointed by the Queen on the advice of the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom to whom he is responsible for the exercise of those of his functions which the law does not require him to exercise on the advice of some other authority. In general, however, he is required to consult the Executive Council in the exercise of his functions and to act on its advice. But he retains direct responsibility for (and need not consult or act on the advice of the Executive Council in relation to) certain matters such as defence, external affairs, international financial services, internal security (including the police) and the public service.

6. The Executive Council, at whose meetings the Governor usually presides, consists of the Chief Minister and three other Ministers, and also the Attorney General and the Financial Secretary as ex officio members. The Chief Minister is the elected member of the Legislative Council whom the Governor judges to be most likely to command the confidence of a majority of the elected members of that Council. The other Ministers are chosen by the Chief Minister from among the elected or nominated members of the Legislative Council.

The Legislative Council

7. The Legislative Council consists of seven elected members, two nominated members and also the Attorney General and the Financial Secretary as ex officio members. Every person who is a Commonwealth citizen, is at least 21 years old and either has resided in Montserrat for the 12 months immediately preceding his nomination for election or is then domiciled and resident in Montserrat is qualified to be elected to the Legislative Council unless he is subject to one of a number of specified disqualifications (for example, if he is a public officer or is of unsound mind or has been convicted of an offence connected with the conduct of elections). There is also a Speaker who is chosen by the Council from outside its own members but who must himself possess the prescribed qualifications for election. Voting is normally by simple majority but a vote of no confidence (which results either in the dismissal of the Ministers or in the dissolution of the Legislative Council, followed by a general election) requires the support of a majority of all the elected members and only they may vote.

8. The Legislative Council may make laws on any subject. It exercises this power by passing bills which are then presented to the Governor for his assent. He may then, in accordance with the usual rules governing how he exercises his functions, either assent to them or (though this could rarely arise in practice since most legislation is government legislation) refuse assent or reserve them for decision by the Secretary of State. There are certain categories of bills (especially those affecting his own responsibilities, for example, for defence, external affairs, etc.) which the Constitution requires him to reserve. Formally, all laws assented to by the Governor may be disallowed by the Queen on the advice of the Secretary of State. The United Kingdom Government retains the power to legislate for Montserrat by Act of Parliament or Order in Council.

9. The Constitution provides that not more than three months may elapse between sessions of the Legislative Council, and the Standing Orders of the Council require meetings to be held, during sessions, at least once in every two months. (If the Council has not been earlier dissolved by the Governor, acting after consultation with the Chief Minister (for example, after a vote of no confidence), it must be dissolved at the end of five years from when it first met following the previous general election. There must be a general election within three months after every dissolution.)

B. CARICOM/OECS

10. Montserrat has been a member of the Caribbean Community (CARICOM) since it was established by the Treaty of Chaguaramas in 1973 to promote economic cooperation and integration among the member countries of the Community comprising more developed and less developed countries (MDCs and LDCs). Montserrat is also a member of the Organisation of Eastern Caribbean States (OECS) which was established in 1981 and is a subgrouping of LDCs. The Eastern Caribbean Central Bank is an institution established within the subgrouping which regulates and monitors the Eastern Caribbean dollar in member territories. The services of all regional institutions set up by CARICOM and the OECS are available to Montserrat.

C. The law

The courts

11. The courts structure consists of the Magistrates Court, the High Court, the Court of Appeal and the Judicial Committee of the Privy Council. There are also Juvenile Courts, a Coroner's Court and a Labour Tribunal (see below). The High Court and the Court of Appeal are in fact the courts which together constitute the Eastern Caribbean Supreme Court. This Court and its judges serve not only Montserrat but also a number of independent countries in the Eastern Caribbean and a number of other British dependent territories in the region. (At present they visit Montserrat periodically for their sittings but the Eastern Caribbean Supreme Court is considering the appointment of a judge to be shared on a permanent basis by Montserrat and Anguilla.) There are elaborate provisions, which form part of the law of all the countries and territories concerned, regulating the appointment and tenure of office of the judges and ensuring that they are protected from political interference from any source. So far as concerns the magistrates in Montserrat and any registrar or other officers of the High Court there who are required to possess legal qualifications, the Constitution requires the Governor, in exercising his powers of appointment and removal, etc., to act only after consultation with the Chief Justice.

Police and prisons

12. As explained above, internal security, including the police, is a subject that the Constitution reserves to the Governor, and the police force is not subject to ministerial direction or control. The Governor is also responsible for the administration of the prison. There is a Prison Committee, consisting of not less than three Justices of the Peace, which is responsible for investigating charges or complaints against prisoners and which also has the duty to enquire into any irregularity or excessive punishment and report to the Governor where necessary.

Criminal proceedings

13. Criminal proceedings are usually initiated (and in the Magistrates Court are usually conducted) by the police who will, however, refer difficult cases to the Attorney General's Chambers for advice or for the Attorney General to take over. In some cases the Attorney General may himself initiate proceedings. Section 21 of the Constitution empowers him to institute and undertake criminal proceedings against any person before any court; to take over and continue any such proceedings that have been instituted by any other person; and to discontinue any such proceedings that have been instituted by himself or any other person. In exercising these powers, he is not subject to anybody else's direction or control.

14. Most criminal proceedings take place before the Magistrates Court but the more serious ones can (and in some cases must) be tried on indictment in the High Court before a judge and jury. All prosecutions in the High Court are conducted by the Attorney General or a Crown Counsel. In all cases the Magistrate or the jury must be satisfied by the prosecution beyond reasonable doubt that the accused person is guilty of the charge against him. Section 57

of the Constitution (which substantially corresponds to articles 14 and 15 of the International Covenant on Civil and Political Rights) guarantees the right to a fair trial, with all the necessary procedural safeguards, and section 56 guarantees the rights of persons in custody (and specifically persons detained in connection with criminal proceedings). Section 66 of the Constitution provides the enforcement machinery for these and other human rights protected by the Constitution (see below).

15. The Magistrates Court Ordinance 1984 and the Juveniles Ordinance 1982 establish special procedures for dealing with juvenile offenders, including the setting up of juvenile courts. When a child or young person is convicted of a criminal offence, he may be sent to a training school for up to three years or until he reaches the age of 16 (whichever is the shorter period) or he may be placed under the supervision of a probation officer or released on a recognizance.

16. Appeals in criminal cases lie from the Magistrate Court and the High Court to the Court of Appeal and there may be a further appeal to the Judicial Committee of the Privy Council.

Civil proceedings

17. Both the Magistrates Court and the High Court have jurisdiction in civil cases also. The jurisdiction of the Magistrates Court covers such matters as debt, breach of contract, most torts (but not defamation, etc.) and most disputes concerning property; but the sum in issue must not exceed EC$ 2,000. The Magistrates Court also has a limited jurisdiction in family matters, for example, in cases relating to custody or maintenance orders. The High Court has unlimited jurisdiction in all civil cases. Appeals in civil cases lie from the Magistrates Court and the High Court to the Court of appeal and there may be a further appeal to the Judicial Committee of the Privy Council.

Coroner's court

18. The Magistrate is the Coroner for Montserrat. He has the duty to investigate all violent and or unnatural deaths or sudden deaths where the cause is unknown. He is empowered to order a post-mortem examination to be carried out in appropriate cases. Where, after such an examination, he is satisfied that the death in question was due to natural causes, he does not usually need to hold a formal inquest but he must do so if the death was violent or unnatural or the result of an accident or in certain other circumstances, for example, if it occurred in prison. In some, but not all, cases he must summon a jury to assist him.

Labour Tribunal

19. The Employment Ordinance provides for the establishment of a Labour Tribunal consisting of six members and a chairman, all appointed by the Governor. Three of the members are appointed to represent the interests of employers and three to represent the interests of employees. The Chairman is appointed after consultation with the Chief Justice. The Tribunal is empowered to make orders declaring the rights of parties to disputes in the employment field and to make enforceable monetary awards in such cases.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

20. The basic means of protecting and enforcing human rights in Montserrat - in addition, that is, to the pressure of public opinion through the democratic process - is by invoking the relevant domestic law and the ordinary courts system which, as explained above, is independent and impartial and is protected from political interference.

21. Under the Common Law system which operates in Montserrat, treaties which apply to Montserrat (including human rights treaties) do not themselves have the force of internal law and cannot be directly invoked before the courts as a source of individual rights, though the courts will, when possible, construe domestic legislation in such a way as to avoid incompatibility with the United Kingdom's international legal obligations. The usual method of giving effect to treaty obligations (when these require some change in existing law or practice) is to enact specific new legislation - this could be by an ordinance enacted locally or by an order in council made by the United Kingdom Government - or to amend existing legislation or to adapt existing administrative practices, as the case may require. Where this results in the creation or definition of specific legal rights and these are denied or interfered with (or there is a threat of such action), a remedy will be available in the courts through the ordinary procedures of civil litigation or in some cases, by criminal sanctions.

22. However, and over and above this, the Constitution of Montserrat does contain, in its Part IV (sects. 52-67), a fully elaborated set of provisions for the protection of the fundamental rights and freedoms of the individual. These provisions, which define in detail the rights concerned and the permissible limitations that may be imposed on them, derive directly from the European Convention on Human Rights and ultimately from the Universal Declaration of Human Rights. In times of emergency (as defined in the Constitution) the law may authorize measures to be taken which derogate from certain of the rights protected but only if those measures are reasonably justifiable for dealing with the situation then existing, a question which can ultimately be determined by the courts.

23. Section 66 of the Constitution provides that if any person alleges that any of the substantive provisions of Part IV has been, or is being, or is likely to be, contravened in relation to him, then, without prejudice to any other remedy that is lawfully available to him, he may apply to the High Court for redress. On such an application, the High Court may make such orders, issue such writs and give such directions as it may consider appropriate for enforcing the rights, under Part IV, of the person concerned. Moreover, if a question as to the contravention of any of the provisions of Part IV arises in any subordinate court, that court must refer it for determination by the High Court. An appeal lies as of right to the Court of Appeal and thence to the Judicial Committee of the Privy Council from any decision of the High Court under Part IV.

24. It is to be noted that, as section 66 of the Constitution makes clear, these safeguards for the protection of human rights that are provided by the Constitution are in addition to the remedies that may exist in the ordinary law, for example, an action for wrongful arrest or false imprisonment or, in appropriate cases, a prosecution.

IV. INFORMATION AND PUBLICITY

25. The texts of the United Nations human rights instruments to which the United Kingdom is a party in respect of Montserrat are usually publicized when they become available in the territory, for example, by being published in the Official Gazette and/or by copies being placed in the Library. The Constitution of Montserrat which, as explained above, makes provision, legally enforceable, for the protection of the fundamental human rights and freedoms of the individual is of course accessible to the public as are the other relevant laws of Montserrat referred to above.

26. The Government-owned radio station, Radio Montserrat, from time to time carries programmes produced by United Nations radio on the subject of human rights. In addition, another local radio station, Radio Antilles, has carried stories focusing on major human rights issues concerning the Caribbean region or other parts of the world.

27. There is no organization in Montserrat specifically devoted to discussing or monitoring human rights issues but the Montserrat Christian Council is extremely active and vigilant in this field.

Annex IX

PITCAIRN

I. LAND AND PEOPLE

1. The Pitcairn group consists of four islands in the Western Pacific Ocean (Pitcairn itself and its dependencies, Henderson, Ducie and Oeno) of which only Pitcairn itself is inhabited. The islanders are descended from mutineers from HMS Bounty, which arrived in Pitcairn in 1790, and the Polynesians who accompanied them. At 31 December 1993 the total population of the island was 53 (28 females and 25 males). Of these, 46 were Pitcairners and 7 were expatriates. The ages of the population range from 4 months to 86 years. All the population live in Adamstown, the only settlement on Pitcairn.

2. Pitcairn is a British Dependent Territory. Its principal sources of income are stamp sales and revenue from interest and dividends. In 1992/93, income for the year was NZ$ 553,128 and expenditure NZ$ 813,995, leaving a deficit of NZ$ 260,867. There is no taxation.

3. Pitcairn's private economy is based on subsistence agriculture and fishing, and the sale of handicrafts, mainly to passing ships. The population of the Island is self-employed, but allowances and wages are paid to members of the community who participate in local government activities and who perform communal services.

4. Education is free and compulsory for all children between 5 and 15 years of age. Instruction is in the English language and is based on the New Zealand standard curriculum. Most Pitcairners are members of the Seventh Day Adventist Church.

II. GENERAL POLITICAL STRUCTURE

A. System of government

5. Pitcairn, whose constitutional arrangements were previously somewhat rudimentary and unsystematized, was brought within the jurisdiction of the United Kingdom's High Commissioner for the Western Pacific in 1898. The Pitcairn Order in Council 1952 established for the first time a separate office of Governor of Pitcairn and, as from 1952 and until 1970, that office was held concurrently by the Governor of Fiji. In 1970 the Order in Council of 1952 was revoked and replaced by the Pitcairn Order 1970 which, together with the Pitcairn Royal Instructions 1970, is in effect the present Constitution of Pitcairn. Copies of the Order and the Royal Instructions are provided in appendices 1 and 2 respectively. These are the instruments which now establish the office of Governor and regulate his powers and duties. The Governor is appointed by the Queen, acting on the advice of the United Kingdom Secretary of State for Foreign and Commonwealth Affairs to whom he is accountable. In practice, the United Kingdom High Commissioner to New Zealand is appointed concurrently as Governor of Pitcairn and the responsibility for the administration of the Island is accordingly vested in him and is discharged by him and officers subordinate to him.

6. Under the 1970 Order, the Governor is the legislature for Pitcairn and is empowered to make laws on any subject. However, the Royal Instructions require him to obtain the prior approval of the Secretary of State for the enactment of certain classes of laws, including laws which appear to him to be inconsistent with the United Kingdom's treaty obligations and laws which discriminate between different communities or religions. Laws enacted by the Governor are styled Ordinances. Formally, all Ordinances are subject to disallowance by the Queen, on the advice of the Secretary of State. The United Kingdom Government retains the power to legislate directly for Pitcairn by Act of Parliament or Order in Council. It is under his legislative power that the Governor establishes courts for Pitcairn and regulates their jurisdiction and procedure (see para. 11 below). The 1970 Order also vests in the Governor the power to appoint persons to offices in the public service and to remove or discipline them.

7. Pitcairn islanders manage their internal affairs through the Island Council. This is established by the Local Government Ordinance which confers on it the duty to provide for the enforcement of the laws of Pitcairn and empowers it to make regulations for the good administration of Pitcairn, the maintenance of peace, order and public safety and the social and economic betterment of the islanders. The Council is required to meet at least once in every month. It consists of 10 members: the Island Magistrate, who is elected every three years; the Chairman of the Internal Committee, who is elected annually; four other elected members, who are also elected annually; the Island Secretary, who is a public officer and serves on the Council ex officio; one nominated member, who is appointed annually by the Governor; and two advisory (non-voting) members, of whom one is appointed annually by the Governor and the other is appointed annually by the other members of the Council.

8. The Island Magistrate is the President of the Island Council. He is also the Chief Executive Officer of Pitcairn and he also presides over the Island Court (see para. 11 below). The formal functions of the Internal Committee are to carry out the orders of the Island Council and to perform such duties as the Council may direct: in practice, its principal function is to organize and implement the work programme. It comprises the Chairman and such other persons (not being members of the Island Council or public officers) as the Council, with the Governor's approval, may appoint.

9. To qualify for voting in elections to the various elective offices (Island Magistrate, Chairman of the Internal Committee and elected Councillors) a person must either be a native-born inhabitant of Pitcairn or have had at least three years' residence on the Island and must be at least 18 years of age. A candidate for election as Island Magistrate or Chairman of the Internal Committee must either be a native-born inhabitant of Pitcairn or have had at least 21 years' residence on the Island; candidates for the other elective offices must either be native-born inhabitants or have had at least five years' residence.

10. The Island Secretary and other non-elected officials (for example, the Postmaster, the Radio Officer and Police Officer) are appointed by the Governor, invariably after consultation with the Council. A Commissioner, based in Auckland, liaises between the Governor and the Island Council.

B. The law

11. The courts for Pitcairn are the Supreme Court, the Subordinate Court and the Island Court. In certain cases an appeal could lie from these courts to the Judicial Committee of the Privy Council. The Supreme Court consists of such judge or judges as the Governor, acting in accordance with instructions from the Secretary of State, may from time to time appoint. It has unlimited jurisdiction in all civil and criminal matters. Trials before the Supreme Court, whether in criminal or in civil cases, would normally be held by a judge sitting alone, but the Court would have power in suitable cases to appoint between two and four assessors. The Subordinate Court consists of a magistrate, who is any fit and proper person whom the Governor appoints for that purpose. It would ordinarily have the same jurisdiction and powers in criminal cases as a magistrate's court in England and the same jurisdiction and powers in civil cases as a county court in England, but the Governor could enlarge its jurisdiction in particular cases. There would be a right of appeal in all cases to the Supreme Court. The Island Court consists of the Island Magistrate sitting with two assessors, but the Island Magistrate is empowered (or in some circumstances is required) to sit alone in dealing with certain cases. It has a wide jurisdiction in civil disputes where the amount in issue does not exceed a specified sum and also in guardianship, custody and maintenance cases and in certain cases involving the affairs of persons of unsound mind or of sick and aged persons. But some civil disputes (for example, suits for malicious prosecution or for defamation) are specifically excluded from its jurisdiction. It also has the power to inquire into deaths that may have been caused or accelerated by any unnatural cause and into cases where property has been destroyed or damaged by fire. Its criminal jurisdiction covers all offences except those specifically excluded by any law, but its powers of punishment are limited and it may not deal with offences committed more than six months previously. It would also act as the court of committal to either the Subordinate Court or the Supreme Court in criminal cases that require to be dealt with by one or the other of those courts. The Governor has the power, either of his own motion or on the application of any party to a case determined by the Island Court, to have the record of the proceedings in that case reviewed by the Supreme Court which could then make such orders and give such directions to the Island Court as it considered necessary or expedient in the interests of justice.

12. Although the law of Pitcairn makes this comprehensive provision for the administration of justice, in practice most aspects of it scarcely ever need to be invoked. It is in fact rare for even the Island Court to be required to sit.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

13. Pitcairn's Constitution, as embodied in the Pitcairn Order 1970 and the Pitcairn Royal Instructions 1970 (appendices 1 and 2), does not contain any provisions expressly guaranteeing human rights nor has any formal machinery been established specifically for that purpose. Under the Common Law system which operates in Pitcairn, treaties which apply to Pitcairn (including human rights treaties) do not themselves have the force of internal law and cannot be directly invoked as a source of individual rights, though the courts are required, when possible, to construe domestic legislation in such a way as

to avoid incompatibility with the United Kingdom's international legal obligations. The usual method of giving effect to treaty obligations (when these require some change in existing law or practice) is to enact specific new legislation or to amend existing legislation or to adapt existing administrative practices, as the case may require. (New legislation for this purpose could take the form of a locally-enacted ordinance or of an order in council made by the United Kingdom Government). Examples of Orders in Council made for this purpose are the Geneva Conventions Act (Colonial Territories Order in Council 1959, which implemented the four Geneva Conventions in Pitcairn and a number of other British Dependent Territories, and the Criminal Justice Act 1988 (Torture) (Overseas Territories) Order 1988, which similarly implemented the Convention against Torture. Were such new or amending legislation results in the creation or definition of specific legal rights and these are denied or interfered with (or there is a threat of such action), a remedy will be available in the courts through the ordinary procedures of civil litigation or, in appropriate cases, by criminal sanctions. But, for the most part, the legal protection of the human rights of Pitcairn islanders does not depend on specific legislation such as the two Orders in Council just referred to: it is assured through the enforcement by the local courts of the basic principles of the law in force in the Island, which are the same as the basic principles of the law of England.

14. Without prejudice to the ability of the courts to grant relief and redress in any case where legal rights are infringed or threatened, the Governor has the ultimate responsibility for overseeing the implementation of human rights in Pitcairn. Any complaint of unlawful or oppressive action by any government official or authority could be raised with him, either directly or through one of his subordinate officers, and would be investigated thoroughly. If it proved to be well founded, he has the power, which he would not hesitate to use, to take the appropriate remedial measures.

IV. INFORMATION AND PUBLICITY

15. The laws in force in Pitcairn, including any specifically relating to human rights, are published by the Government of the United Kingdom and are accessible to all on the Island through the Island Secretary's office.

16. Pitcairn's reports to international bodies are prepared by the Government of the United Kingdom, drawing on information provided by the Governor and his officials.

Annex X

ST. HELENA

I. LAND AND PEOPLE

1. St. Helena, with its Dependencies (the islands of Ascension and Tristan da Cunha, which latter also includes Gough Island, Nightingale Island and Inaccessible Island), is situated in the South Atlantic Ocean, some 1,200 miles from the coast of Africa and some 1,800 miles from the coast of South America. Its capital is Jamestown. The island of St. Helena, though believed to have been discovered by the Portuguese in 1502 and though at one time claimed by the Dutch, remained uninhabited until it was occupied, in 1659, by British settlers acting under the authority of a charter granted to the East Indies Company. It was formally made a dependent territory of the British Crown in 1833. Ascension and Tristan da Cunha were also uninhabited when they were first occupied by British settlers in the early nineteenth century. These settlements have continued uninterrupted since then. Ascension was formally made a dependency of St. Helena in 1922 and Tristan da Cunha was made such a dependency in 1938.

2. Background statistical information, using the most up-to-date material available, is as follows:

Gross domestic product per capita	£1,747 (1992/93)
Gross national product	£10,403m (1992/93)
Rate of inflation	3.1 per cent (August 1994)
External debt	None. But St. Helena is not economically viable and it is dependent on grants-in-aid from the United Kingdom Government
Rate of unemployment	10.3 per cent (September 1993)
Literacy rate	Males - 96.4 per cent Females - 97.5 per cent 1987 Census
Population	5,139 (1992/93 estimate - St. Helena only)
Percentage of population speaking English as mother tongue	100 per cent
Life expectancy	Males - 68.4 years Females - 75.4 years (1984-1993 average)

Infant mortality rate	21.4 per 1,000 live births, 5 year moving average 1989-1993 (too few to provide separate steady and reliable rates for each gender)
Maternal mortality rate	No deaths in 5 years 1988-1993
Birth rate	14.1 per 1,000 population 5 year moving average 1989-1993
Death rate (females)	7.6 per 1,000 population 5 year moving average 1989-1993
Death rate (males)	9.2 per 1,000 population 5 year moving average 1989-1993
Percentage of population under 15 years of age	Males under 15 - 13.7 per cent Females under 15 - 13.9 per cent 1987 Census
Percentage of population over 65 years of age	Males over 65 - 4.0 per cent Females over 65 - 5.0 per cent 1987 Census
Percentage of population in rural and urban areas	Rural - 56.7 per cent Urban (Jamestown and Half Tree Hollow) - 43.3 per cent 1987 Census
Ethnic characteristics	Of many origins with no ethnic divisions
Religions	Church of England Males - 87.4 per cent Females - 85.6 per cent Jehovah's Witness Males - 4.2 per cent Females - 5.5 per cent Baptist Males - 2.7 per cent Females - 2.8 per cent There are also the Salvation Army, Seventh Day Adventists, Roman Catholics and Methodists, all at less than 2 per cent - 1987 Census

II. GENERAL POLITICAL STRUCTURE

A. System of government

3. St. Helena is a British Dependent Territory. Its Constitution is now contained in Schedule 2 to the St. Helena Constitution Order 1988, a copy of which is provided in appendix 1. It provides for a simplified form of "Westminster style" Parliamentary government, with a Governor (representing the Queen), an Executive Council (roughly corresponding to a Cabinet) and a largely elected legislative Council (from whose elected members at least half of the members of the Executive Council are drawn).

4. The Governor is appointed by the Queen, on the advice of the United Kingdom Secretary of State for Foreign and Commonwealth Affairs to whom he is responsible for the exercise of those of his functions which he is not required by law to exercise on the advice of some other person or authority. He exercises executive authority on behalf of the Queen. He is assisted by an Executive Council over which he generally presides and which consists of three ex officio members (the Chief Secretary, the Financial Secretary and the Attorney General) and not less than three nor more than five other members who are elected members of the Legislative Council. The Governor is generally required to consult the Executive Council in the exercise of his functions and to act in accordance with its advice, but the Constitution specifies a number of circumstances in which, or matters upon which, he need not consult the Council or need not act in accordance with its advice. In particular, the Governor has reserved to him, as his special responsibilities, the following matters in connection with which he may act without, or contrary to, the advice of the Executive Council: the public service (i.e. appointments discipline and terms of service of public officers); defence; external affairs; internal security, including the police; the administration of justice; finance; and shipping.

5. The Constitution also provides for the establishment of Council Committees (i.e. Committees consisting both of members of the Legislative Council and of outsiders - but the members of the Legislative Council must be in the majority) upon which executive and administrative functions may be conferred: for example, a Council Committee may be charged with responsibility for particular government departments or it may be invested with a responsibility which, under a local law, would otherwise be exercisable by the Governor himself or some other authority.

6. The Legislative Council consists of a Speaker (who may be, but need not be, himself an elected member of the Council and who is elected by the elected members), three ex officio members (the Chief Secretary, the Financial Secretary and the Attorney General - but the Attorney General has no vote in the Council) and 12 elected members. Elected members must be British citizens or British Dependent Territory citizens of at least 21 years of age who are registered as voters in St. Helena and are not subject to any of the specified disqualifications (for example, on grounds of mental illness, bankruptcy, imprisonment, etc.). For the purpose of Legislative Council elections St. Helena is divided into defined electoral areas (constituencies), and elections, by secret ballot, are held on the basis of universal adult

suffrage. The voting age is 18 years or more. Although two political parties are nominally in existence, they have been inactive since 1976 and elections since then have been non-partisan.

7. There must be at least one session of the Legislative Council in every year, with an interval of no more than 12 months between the end of each session and the beginning of the next. The Governor may dissolve the Legislative Council at any time but must do so not later than four years after it first met following the previous general election. A general election must take place within three months of each dissolution and the Legislative Council must be summoned into session within one month after each general election.

8. Laws on any subject may be made for St. Helena itself (i.e. the island of St. Helena) by "the Governor with the advice and consent of the Legislative Council" and for Ascension and Tristan da Cunha by "the Governor in his discretion". (In practice, laws for Ascension and Tristan da Cunha often take the form of a straightforward application of laws made for St. Helena, with the necessary adaptations or modifications.) All such laws are styled "Ordinances". St. Helena laws are made by bills introduced in the Legislative Council, which are there passed by a majority of the members present and voting and which are then assented to by the Governor. The Governor has a reserve power in certain circumstances (for example, where he considers it required by the interests of public order, public faith or good government) to treat a bill which has been introduced in the Council, but which the Council has failed to pass, as having nevertheless been passed, and to assent to it. All Ordinances are formally subject to disallowance by the Queen on the advice of the Secretary of State. The United Kingdom Government retains the power to legislate for St. Helena by Act of Parliament or by Order in Council.

B. The law

9. The courts structure consists of a Magistrates' Court, a Juvenile Court and a Coroner's Court, for all of which provision is made by local legislation; a Supreme Court and a Court of Appeal, which are established by the Constitution itself; and the Judicial Committee of the Privy Council. The law administered by all courts is basically the law of England in so far as it is applicable to local circumstances (and, where appropriate, with the necessary modifications and adaptations to make it fit local circumstances) but in many fields it is of course specifically displaced or modified by local legislation.

10. The Magistrates' Court has a limited jurisdiction, defined by local enactment, in both criminal and civil cases. In criminal cases its jurisdiction extends to offences under the Theft Acts (with some minor exceptions) and to other statutory offences for which the prescribed maximum penalty does not exceed seven years' imprisonment, but the magistrates may not impose a sentence of imprisonment exceeding 18 months for a single offence or two years in a case where more than one offence has been committed; nor may they impose a fine exceeding £2,000. In civil cases the jurisdiction of the Magistrates' Court extends to disputes where the value of the subject-matter does not exceed £500. The Supreme Court, as well as being the court to which appeals lie from the Magistrates' Court, has a power of revision in relation to all cases dealt with by the Magistrates' Court; and the Chief Justice,

during his annual visit, reviews all such cases dealt with since his previous visit. Magistrates (who are in fact formally styled Justices of the Peace, as in England) are appointed by the Governor in accordance with his special constitutional responsibility for the administration of justice (see para. 4 above). There are separate Magistrates' Courts in Ascension and Tristan da Cunha. In Ascension the Administrator is the Magistrate ex officio. He may sit alone but he usually sits with Justices of the Peace, and a full bench of Justices of the Peace may sit without him. In Tristan da Cunha the Administrator is the Magistrate ex officio and sits alone.

11. The Supreme Court has a jurisdiction in civil and criminal matters broadly comparable with the jurisdiction of the High Court in England but it also exercises jurisdiction in criminal cases which in England would fall to the Crown Court and in civil cases which in England would fall to a county court. As noted above, it is also the appellate court in appeals from a Magistrates' Court. It is normally presided over by a single judge, styled the Chief Justice, who is appointed by the Governor on the instructions of the Queen given through a Secretary of State. The Chief Justice is non-resident but visits St. Helena and Ascension approximately annually and Tristan da Cunha as occasion arises. He is also empowered by the Constitution to sit in the United Kingdom for certain purposes and in certain circumstances. For example, if all parties consent, he may sit in the United Kingdom to hear appeals and to take evidence in civil proceedings.

12. The Court of Appeal, to which appeals lie from the Supreme Court, consists of a President and two or more Justices of Appeal. These judges are also appointed by the Governor on the instructions from the Queen given through a Secretary of State and they, too, are of course non-resident. The Court of Appeal is empowered to sit either in St. Helena or the Dependencies or "elsewhere", but in practice it would ordinarily sit in the United Kingdom. Appeals from the Court of Appeal lie to the Judicial Committee of the Privy Council.

13. Throughout the courts structure appeals lie in a manner broadly comparable with that obtaining in the United Kingdom. The most notable special feature is the revisory jurisdiction of the Supreme Court in relation to cases dealt with by the Magistrates' Court (see para. 10 above). This is seen as a very valuable safeguard in circumstances where most defendants are not represented by qualified lawyers.

14. The Constitution expressly charges the Attorney General with responsibility for criminal prosecutions and protects his independence in discharging that responsibility. He is given complete discretion to institute and undertake criminal proceedings against any person before any court for any offence; to take over and continue any such proceedings that have been instituted by anybody else; and to discontinue any such proceedings that have been instituted either by him or by anybody else. The power to take over and continue proceedings and the power to discontinue proceedings are vested in him to the exclusion of any other person or authority and the Constitution provides that, in the exercise of all his powers in relation to prosecutions, he is not subject to the direction or control of any other person or authority.